

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
2 HOURS

DATE: April 4, 2000

SUBJECT: Steller Sea Lions

ACTION REQUIRED

- (a) Status report on litigation, implementation of sea lion measures, and comprehensive FMP consultation.
- (b) Extend emergency rule for protective measures.
- (c) Discussion of Pacific cod interactions.
- (d) Status report on U.S.-Russia sea lion research.

BACKGROUND

(a) Litigation

In February, NMFS staff provided a status report on litigation pertaining to the Endangered Species Act (ESA) and the potential effects of groundfish fisheries on Steller sea lions. 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 ruled that BiOp2 was insufficient in scope and that NMFS was out of compliance with the ESA. NMFS is preparing a comprehensive biological opinion on the groundfish FMPs, with completion scheduled for October 2000, well before the 2001 fisheries.

On March 30, 2000, the plaintiffs filed a motion for injunction on all groundfish trawling within Steller sea lion critical habitat (attached as Item C-3(a)). A map showing these critical habitat areas is attached as Item C-3(b). The plaintiffs have also filed legal claims against the revised final reasonable and prudent alternatives (RFRPAs); no hearings or briefings have been scheduled yet.

(b) Emergency Rule

On January 25, 2000, NMFS issued an emergency interim rule implementing the RFRPAs 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 (65 FR 3892). This emergency interim rule (attached as Item C-3(c)) will expire on July 19, 2000. A permanent rule is being prepared, but won't be ready before the emergency rule expires. At this meeting, the Council may recommend that the emergency rule be extended through December 31, 2000.

(c) Pacific Cod Interactions

The 1999 biological opinion on TAC specifications for Alaskan groundfish fisheries suggested areas of concern about potential competition between cod fisheries and Steller sea lions. At this meeting, NMFS staff will review the information regarding competition and describe ongoing analyses to further evaluate the issue. The Council may wish to provide input on any additional analysis required. In June, NMFS will present their findings. If the analysis indicates that these fisheries may be competing for Steller sea lion prey, the Council may be requested to recommend appropriate measures to alleviate those concerns prior to the 2001 fisheries.

(d) U.S.-Russia Sea Lion Research

Our marine mammal scientists recently met with their Russian counterparts. We will receive a status report on research on sea lion abundance and sea lion-fisheries interactions in the Russian EEZ.

HONORABLE THOMAS S. ZILLY

1 JANIS SEARLES (ASB #9606027)
Earthjustice Legal Defense Fund
2 325 Fourth Street
Juneau, AK 99801-1145
3 (907) 586-2751

4 PETER VAN TUYN (ASB #8911086)
JACK K. STERNE (ASB #9905010)
5 Trustees for Alaska
1026 West 4th Avenue, Suite 201
6 Anchorage, AK 99501
(907) 276-4244

7 Attorneys for Plaintiffs
8

9 TODD D. TRUE (WSB #12864)
Earthjustice Legal Defense Fund
10 705 Second Avenue, Suite 203
Seattle, WA 98104-1711
11 (206) 343-7340

12 Local Counsel for Plaintiffs
13

14 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

15 GREENPEACE, et al.,

16 Plaintiffs,

17 v.

18 NATIONAL MARINE FISHERIES
19 SERVICE, and WILLIAM DALEY,

20 Defendants,

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

24 Intervenor-Defendants.
25
26
27
28

) Civ. No. C98-0492Z

) MEMORANDUM IN SUPPORT OF
) PLAINTIFFS' MOTION FOR A
) PERMANENT INJUNCTION UNDER
) THE ENDANGERED SPECIES ACT

) ORAL ARGUMENT REQUESTED

) NOTE ON MOTION CALENDAR FOR:
) FRIDAY, APRIL 21, 2000

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION 1

ARGUMENT 2

 A. Congress Designed Section 7 of the Endangered Species Act to Protect Listed Species And Critical Habitat From Potentially Harmful Actions..... 2

 B. In the Absence of Completed Consultation, Actions That May Affect a Listed Species or Critical Habitat Cannot Go Forward. 4

 C. Groundfish Trawling In Critical Habitat Must Be Enjoined Until An Adequate Comprehensive Biological Opinion Is Completed. 7

 1. Previous NMFS Analyses Have Concluded That The Groundfish Fisheries Are Likely To Harm The Western Population of Steller Sea Lions..... 8

 2. Other Evidence Demonstrates That Implementation of the FMPs Likely Harms Steller Sea Lions by Permitting Groundfish Trawl Fisheries to Remove Steller Sea Lion Prey From Critical Habitat. 10

 a. Steller Sea Lions Continue to Decline. 10

 b. The Groundfish Trawl Fisheries Catch Steller Sea Lion Prey..... 11

 c. The Groundfish Trawl Fisheries Remove Sea Lion Prey from Designated Critical Habitat. 12

 d. The Removal of Sea Lion Prey from Designated Critical Habitat Poses a Risk of Harm. 13

 e. An Injunction Is Warranted Because the Groundfish Trawl Fisheries Threaten Harm to Steller Sea Lions and Their Critical Habitat..... 15

 D. The Groundfish Trawl Fisheries May Not Continue Under Section 7(d). 16

 E. If the Court Finds That The Section 7(d) Analysis Applies In This Case, Section 7(d) Prohibits The Continued Implementation Of The FMPs Pending The Completion Of An Adequate Biological Opinion..... 20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

CONCLUSION..... 23

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Bays' Legal Fund v. Browner
828 F. Supp. 102 (D. Mass. 1993)22

Conner v. Burford
848 F.2d 1441 (9th Cir. 1986)1, 2, 3,
5, 7, 16,
17, 18

Forest Conservation Council v. Espy
835 F. Supp. 1202 (D. Idaho 1993),
aff'd 42 F.3d 1399 (9th Cir. 1994)22

Greenpeace v. NMFS
55 F. Supp. 2d 1248 (W.D. Wash. 1999)10, 13

Greenpeace v. NMFS
80 F. Supp. 2d 1137 (W.D. Wash. 2000)1, 7, 8,
14, 15

Loggerhead Turtle v. County Council of Volusia
896 F. Supp. 1170 (M.D. Fla. 1995)21

Marbled Murrelet v. Babbitt
83 F.3d 1060 (9th Cir. 1996)4, 9, 13

National Wildlife Federation v. Burlington Northern R.R., Inc.
23 F.3d 1508 (9th Cir. 1994)4

Natural Resources Defense Council v. Houston
146 F.3d 1118 (9th Cir. 1998)17

Nebraska v. Rural Electrification Admin.
12 ERC 1156, 1171 (D.Neb. 1978)22

No Oilport! v. Carter
520 F. Supp. 334 (W.D.Wash. 1981)22

North Slope Borough v. Andrus
486 F. Supp. 332 (D.D.C. 1979),
aff'd in part, rev'd in part, 642 F.2d 589 (D.C. Cir. 1980)17

1 Pacific Rivers Council v. Thomas
30 F.3d 1050 (9th Cir. 1995)19

2

3 Pacific Rivers Council v. Thomas
873 F. Supp. 365 (D. Idaho 1995)21

4

5 Sierra Club v. Marsh
816 F.2d 1376 (9th Cir. 1987)4, 18, 19, 21

6

7 Sun Exploration and Product Co. v. Lujan
489 U.S. 1012 (1989)1

8 Tennessee Valley Authority v. Hill
437 U.S. 153 (1978)2, 4, 5,
9 7, 22

10

11 Thomas v. Peterson
753 F.2d 754 (9th Cir. 1985)2, 6, 7

REGULATIONS

12

13 50 C.F.R. § 402.126

14

15 50 C.F.R. § 402.133

16 50 C.F.R. § 402.143

17 50 C.F.R. § 402.14(a)3

18 50 C.F.R. § 402.14(g)3

19 50 C.F.R. § 402.14(h)3

20

STATUTES

21

22 16 U.S.C. § 15312

23 16 U.S.C. § 1536(a)3

24 16 U.S.C. § 1536(a)(2)2, 16, 18, 22

25 16 U.S.C. § 1536(b)(3)(A)3

26 16 U.S.C. § 1536(d)3, 17, 20

27

28 16 U.S.C. § 1536(h)2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MISCELLANEOUS

51 Fed. Reg. 19926 (1986)16

H. R. Conf. Rep. No. 697, 96th Cong., 1st Sess. 12 (1979),
reprinted in 1979 U.S. Code Cong. & Admin. News 25725

H.R. Rep. No. 1625, 96th Cong., 2d Sess. 20 (1978)3

H.R. Rep. No. 1625, 96th Cong., 2d Sess. 20 (1978)17

S.Rep. No. 874, 95th Cong., 2d Sess. 5 (1978)3

INTRODUCTION

1
2 This Court recently held that "NMFS is in continuing violation of the ESA until such
3 time as a comprehensive [biological] opinion adequately addressing the full impact of the
4 [Fishery Management Plans] is completed." Greenpeace v. NMFS, 80 F. Supp.2d 1137, 1150
5 (W.D. Wash. 2000); see also id. at 1141-1144 (discussion of procedural history of this litigation).
6 The National Marine Fisheries Service (NMFS) has initiated consultation on the implementation
7 of the FMPs, acknowledging that the individual, combined, and cumulative effects of the
8 fisheries may affect sea lions and their critical habitat. However, the biological opinion resulting
9 from this consultation will not be in place before the year 2001 fisheries, at the earliest.
10 Declaration of Andrew A. Rosenberg at ¶ 10 (filed Feb. 11, 2000); see also Greenpeace, 80 F.
11 Supp.2d at 1142 (describing consultation).

12 Despite NMFS' "continuing violation" of the Endangered Species Act (ESA), the action
13 subject to consultation – the prosecution of the groundfish fisheries pursuant to the FMPs – is
14 occurring prior to the completion of consultation. This is directly contrary to the "clear
15 mandate" of section 7 of the ESA "that a comprehensive biological opinion ... be completed
16 before initiation of the agency action." Conner v. Burford, 848 F.2d 1441, 1455 (9th Cir. 1986)
17 (emphasis added); cert. denied sub nom., Sun Exploration and Prod. Co. v. Lujan, 489 U.S. 1012
18 (1989).

19 The evidence demonstrates that the continued implementation of the FMPs, particularly
20 through the operation of the groundfish trawl fisheries in designated critical habitat, poses a
21 reasonably certain threat of harm to Steller sea lions and their critical habitat. By this motion,
22 plaintiffs seek to prevent such further harm to endangered Steller sea lions and their critical
23 habitat. Plaintiffs accordingly request an immediate injunction against all groundfish trawl
24 fishing in all designated sea lion critical habitat for the endangered Western population of Steller
25 sea lions, until such time as NMFS completes a legally adequate comprehensive biological
26 opinion.

ARGUMENT

A. CONGRESS DESIGNED SECTION 7 OF THE ENDANGERED SPECIES ACT TO PROTECT LISTED SPECIES AND CRITICAL HABITAT FROM POTENTIALLY HARMFUL ACTIONS.

The Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1531 *et seq.*, is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." Tennessee Valley Auth. v. Hill, 437 U.S. 153, 180 (1978) (TVA). A review by the Supreme Court of the Act's "language, history, and structure" convinced the Court "beyond doubt" that "Congress intended endangered species to be afforded the highest of priorities." *Id.* at 174. "The plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost." *Id.* at 184. To accomplish this purpose, the ESA includes both substantive and procedural provisions that, together, are designed to protect and recover threatened and endangered species.

The heart of the ESA's substantive protection for species and their habitat is section 7(a)(2), which requires that every federal agency insure that its actions are not likely to jeopardize a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. § 1536(a)(2). The substantive duty imposed by section 7(a)(2) is constant, relieved only by an exemption from the Endangered Species Committee. 16 U.S.C. § 1536(h); Conner, 848 F.2d at 1452 n.26.

The heart of the ESA's procedural protection is the consultation process, which Congress designed "to ensure compliance with the [ESA's] substantive provisions." Thomas v. Peterson, 753 F.2d 754, 764 (9th Cir. 1985). "The ESA's procedural requirements call for a systematic determination of the effects of a federal project on endangered species. If a project is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA's substantive provisions will not result." *Id.* (citing TVA, 437 U.S. 153). Compliance with the procedural provisions of the ESA – making the systematic determination of the effects of the action through the consultation process – is thus integral to compliance with the substantive requirements of the Act.

1 The formal consultation process commences when a federal agency determines that a
2 proposed federal action "may affect listed species or critical habitat," 50 C.F.R. § 402.14(a), and
3 concludes when the expert agency issues a biological opinion determining whether the proposed
4 action is likely to jeopardize a listed species or destroy or adversely modify its critical habitat.
5 16 U.S.C. § 1536(b)(3)(A); see also, 50 C.F.R. § 402.14(g) (responsibilities of expert agency
6 during formal consultation); 50 C.F.R. § 402.14(h) (contents of biological opinion). Under this
7 statutory framework, federal actions that may affect a listed species or critical habitat may not
8 proceed unless and until the federal agency insures, through completion of the consultation
9 process, that the action is not likely to cause jeopardy or adverse modification. 16 U.S.C. §
10 1536(a); 50 C.F.R. §§ 402.14, 402.13; Conner, 848 F.2d at 1455.

11 Congress also recognized that the obligation to insure against jeopardy and adverse
12 modification could be eroded by other actions taken during the consultation period even though
13 the project itself could not proceed before completion of consultation. Thus, Congress imposed
14 further restrictions on agency actions during the consultation period through ESA section 7(d).
15 This section provides:

16 **Limitation on commitment of resources.** After initiation of consultation
17 required under subsection (a)(2) of this section, the Federal agency ... shall not
18 make any irreversible or irretrievable commitment of resources with respect to the
19 agency action which has the effect of foreclosing the formulation or
20 implementation of any reasonable and prudent alternative measures which would
21 not violate subsection (a)(2) of this section.

22 16 U.S.C. § 1536(d). Congress made clear that section 7(d) is an additional limitation on agency
23 action during the consultation period that does not diminish the express requirements of section
24 7(a)(2). See, e.g., H.R. Rep. No. 1625, 96th Cong., 2d Sess. 20 (1978) (section 7(d) "further
25 strengthen[s] the consultation process"); S.Rep. No. 874, 95th Cong., 2d Sess. 5 (1978) ("[t]he
26 basic premise ... is that the integrity of the interagency consultation process designated under
27 section 7 of the act be preserved"); Conner, 848 F.2d at 1455 n.34 ("section 7(d) does not amend
28 section 7(a) to read that a comprehensive biological opinion is not required so long as there is no
irreversible or irretrievable commitment of resources.").

1 Under this statutory structure, neither actions which may affect listed species or their
2 critical habitat, nor other actions that have the effect of committing an agency to the proposed
3 action may go forward unless and until the consultation process has been completed.

4 **B. IN THE ABSENCE OF COMPLETED CONSULTATION, ACTIONS THAT MAY
5 AFFECT A LISTED SPECIES OR CRITICAL HABITAT CANNOT GO FORWARD.**

6 In cases involving violations of the Endangered Species Act, Congress expressly has
7 foreclosed the traditional exercise of equitable discretion. TVA v. Hill, 437 U.S. 153, 173, 193-
8 95 (1978); Marbled Murrelet v. Babbitt, 83 F.3d 1068, 1073 (9th Cir. 1996). Once a violation of
9 the Endangered Species Act is found, as is the case here, the balance of hardships and the public
10 interest always favor an injunction to protect the endangered species. TVA, 437 U.S. at 187-88;
11 Marbled Murrelet, 83 F.3d at 1073. "Congress has spoken in the plainest of words, making it
12 abundantly clear that the balance has been struck in favor of affording endangered species the
13 highest of priorities, thereby adopting a policy which it described as 'institutionalized caution.'"
14 Sierra Club v. Marsh, 816 F.2d 1376, 1383 (9th Cir. 1987) (citing TVA, 437 U.S. at 194).

15 To reflect the "institutionalized caution" embodied by the Act, the burden on plaintiffs to
16 demonstrate that an injunction under the ESA is warranted is low. As articulated in cases
17 brought under section 9 of the ESA, to merit an injunction, plaintiffs need to show only a
18 reasonably certain threat of future harm to a listed species. Marbled Murrelet v. Babbitt, 83 F.3d
19 1060, 1068 (9th Cir. 1996); see also National Wildlife Fed'n v. Burlington Northern R.R., Inc.,
20 23 F.3d 1508, 1511 (9th Cir. 1994) ("reasonable likelihood of future violations of the ESA").
21 The Ninth Circuit does "not require that future harm be shown with certainty before an
22 injunction may issue," only that "future injury be sufficiently likely." Id. at 1512; see also id. at
23 1512 n.8 (threat of extinction not required before an injunction may issue).

24 The application of the standard for an injunction under the ESA in cases involving
25 violations of section 7 illustrates that where agencies seek to go forward with actions that may
26 affect listed species or critical habitat prior to completing an adequate consultation under section
27 7, the burden on plaintiffs to demonstrate a threat of harm is minimal. The very purpose of the
28 consultation process is to gather, generate, and assess information concerning the effects of a

1 project that may affect a listed species or its critical habitat. In the absence of a completed
2 consultation, much of that information is unknown or otherwise unavailable to plaintiffs.
3 Imposing a significant burden to demonstrate a threat of harm under such circumstances would
4 fail to effectuate the purposes of the ESA – affording endangered species the “highest of
5 priorities,” and “halt[ing] and revers[ing] the trend towards species extinction, whatever the
6 cost.” TVA, 437 U.S. at 174, 184; see also H. R. Conf. Rep. No. 697, 96th Cong., 1st Sess. 12
7 (1979), reprinted in 1979 U.S. Code Cong. & Admin. News 2572, 2576 (section 7 places “the
8 burden on the action agency” to demonstrate that its action likely will not jeopardize the species
9 or adversely modify its critical habitat, and the agency must “give the benefit of the doubt to the
10 species”). Thus, under circumstances similar to those in the instant case, the Ninth Circuit has
11 enjoined agency actions pending completion of the section 7 consultation process upon a
12 minimal showing of harm.

13 For example, in Conner v. Burford, the Ninth Circuit enjoined further oil and gas lease
14 sales and related surface-disturbing activity until the action agency completed a comprehensive
15 biological opinion assessing the effects of all phases of the oil and gas activities. Conner, 848
16 F.2d at 1453-54. The agency argued that it was justified in conducting the lease sales because
17 biological opinions assessing the effects of leasing had reached no jeopardy conclusions,
18 additional evaluations would be prepared before all subsequent activities, and various lease
19 stipulations would protect species should subsequent activities prove threatening. Id. at 1452.
20 The agency argued further that “the ESA’s mandate to protect species is satisfied without a
21 comprehensive biological opinion” because the leases required additional review prior to
22 initiation of activity, and the agency retained the authority to modify or disallow the activity. Id.
23 at 1454-55. As in the instant case, the agency sought to proceed with an action for which only a
24 biological opinion of inadequate scope had been prepared, on the basis of assertions of adequate
25 interim protection and promises of future compliance.

26 The Ninth Circuit soundly rejected this approach, id. at 1455, and specifically noted that
27 “safeguards [in the leases] cannot substitute for an initial, comprehensive biological opinion.”
28 Id. at 1458 n.41. The Court therefore enjoined both surface-disturbing activities on leased land

1 and further leasing. Id. at 1458. In imposing this remedy, the Court had before it information
2 concerning the presence of listed species, the behavior and habitat of the species, and the likely
3 effects of post-leasing activities. Id. at 1452, 1453-54. In the absence of the "systematic
4 determination of the effects of a federal project on endangered species" required by section 7,
5 such information was sufficient to support an injunction against the proposed action in Conner.
6 Id. at 1458 n.40.

7 Similarly, in Thomas v. Peterson, the Ninth Circuit enjoined construction of a road
8 pending compliance with the ESA based on a minimal showing of potential harm to a listed
9 species. 753 F.2d 754 (9th Cir. 1985). In Thomas, the Forest Service sought to build a road in an
10 area where endangered wolves might be present, even though it had not completed a biological
11 assessment. Id. at 763; see also 50 C.F.R. § 402.12 (describing biological assessments). As in
12 Conner, the Court emphasized that without first preparing the required section 7 evaluation, the
13 Forest Service could not determine "whether the proposed project will result in a violation of the
14 ESA's substantive provisions." Thomas, 753 F.2d at 763. "Given a substantial procedural
15 violation of the ESA in connection with a federal project, the remedy must be an injunction of
16 the project pending compliance with the ESA." Id. at 764.¹

17 In rejecting the Forest Service's arguments against an injunction in Thomas, the Ninth
18 Circuit described the effect of permitting the proposed agency action to go forward without an
19 adequate biological assessment:

20 The Forest Service would require the district court, absent proof by the plaintiffs
21 to the contrary, to make a finding that the ... road is not likely to effect [sic] the
22 [endangered wolf], and that therefore any failure to comply with ESA procedures
23 is harmless. This is not a finding appropriate to the district court at the present
24 time. Congress has assigned to the agencies and to the Fish & Wildlife Service
25 the responsibility for evaluation of the impact of agency actions on endangered
species, and has prescribed procedures for such evaluation. Only by following the
procedures can proper evaluations be made. It is not the responsibility of the

26 ¹ During the pendency of the case, the Forest Service apparently completed a biological
27 assessment and determined that with mitigation measures, the road would not affect the
28 endangered wolves. Id. at 765. Nevertheless, the Ninth Circuit enjoined construction of the road
and remanded the case to the district court for a determination of the adequacy of the biological
assessment, and of whether its preparation after approval of the road could cure the ESA
violation. Id.

1 plaintiffs to prove, nor the function of the courts to judge, the effect of a proposed
2 action on an endangered species when proper procedures have not been followed.
3 We therefore hold that the district court erred in declining to enjoin construction
4 of the ... road pending compliance with the ESA.

5 Id. at 765 (citation omitted) (emphasis added). The likely presence of the listed wolf was
6 sufficient to enjoin road construction, without proof of whether the effects of the road were
7 reasonably likely to harm wolves. Id. at 763. The Ninth Circuit in Thomas thus set a minimal
8 threshold for the plaintiffs.

9 Conner and Thomas make clear that it is only by "tak[ing] a look at all the possible
10 ramifications of the agency action," that agencies are able to make reasoned judgments about the
11 effects of their actions. Conner, 848 F.2d at 1453; see also Thomas, 753 F.2d at 765. Where an
12 agency has not completed this process, knowledge about the effects of the action on listed
13 species and critical habitat is necessarily incomplete and the risk of uncertainty is borne by the
14 species. This result is unacceptable under the ESA. TVA, 437 U.S. at 174.

15 C. GROUND FISH TRAWLING IN CRITICAL HABITAT MUST BE ENJOINED UNTIL
16 AN ADEQUATE COMPREHENSIVE BIOLOGICAL OPINION IS COMPLETED.

17 The reasoning supporting the injunctions in Conner and Thomas applies to the instant
18 case. All three cases involve agency efforts to conduct an activity that is subject to the
19 consultation requirements of section 7(a)(2), before an adequate consultation has been
20 completed. In the instant case, NMFS simply has not done the analysis to determine whether
21 implementation of the FMPs will result in a violation of the ESA's substantive provisions, an
22 outcome that is "impermissible." Thomas at 764 (citing TVA, 437 U.S. 153); see also
23 Greenpeace, 80 F. Supp.2d at 1147-1150 (discussing unanalyzed and missing information).²

24 ² Until the consultation process is complete, NMFS cannot demonstrate that the implementation
25 of the FMPs through the conduct of the groundfish fisheries is not likely to jeopardize sea lions
26 or adversely modify their critical habitat, let alone threaten harm. Thus, NMFS' "belie[f] that the
27 2000 [total allowable catch] specifications will [not] threaten the survival and recovery of Steller
28 sea lions nor [sic] diminish the value of designated critical habitat for sea lions," Rosenberg
Declaration at ¶ 9 (filed 2/11/00), must be rejected. The agency simply has not gathered the
information or done the work required that would provide a rational basis for this ad hoc
pronouncement. Greenpeace, 80 F. Supp.2d at 1148-1150. Under these circumstances,
groundfish trawling in designated Steller sea lion critical habitat cannot be permitted to continue
unless and until NMFS produces an adequate comprehensive biological opinion. Conner, 848
F.2d at 1454.

1 Thus, as in Conner and Thomas, because sufficient evidence exists that groundfish trawling in
2 sea lion critical habitat threatens harm to sea lions, an injunction must issue until NMFS
3 completes an adequate comprehensive consultation.³

4 The evidence available in the instant case is far stronger than that available to the court in
5 Conner and Thomas. As explained below, the agency's own documents and analysis
6 demonstrate that the individual, combined, and cumulative effects of the groundfish trawl
7 fisheries on Steller sea lions and their critical habitat likely are harmful, and thus an injunction
8 against groundfish trawling in sea lion critical habitat is warranted.

9 1. Previous NMFS Analyses Have Concluded That The Groundfish Fisheries Are
10 Likely To Harm The Western Population of Steller Sea Lions.

11 Before NMFS prepared a biological opinion on the 2000 total allowable catch
12 specifications, the agency set out a process for assessing, individually, the likely effects of each
13 groundfish fishery.⁴ The scientist who conducted the assessment described it in this way: "The
14 intent of the review is to determine if a fishery is likely to adversely affect one of the protected
15 species...or designated critical habitat...." Exhibit 10 at 1. "If the answer is 'yes' for a given
16 fishery, then that fishery will be included in the formal consultation." Id. (emphasis added).

17 To aid in this determination, NMFS created a matrix of listed species and groundfish
18 fisheries, and a set of questions to evaluate the effects of each fishery on each listed species. See
19 Exhibit 11; Exhibit 12 at 6-7. The questions addressed such factors as (1) whether the target of
20 the fishery is a sea lion prey item, (2) whether the size of sea lion prey item overlaps with the
21 size of the fish species caught by the fishery, (3) whether the fishery overlaps spatially with sea

22 ³ The mere initiation or reinitiation of consultation does not operate to change the results in
23 Conner or Thomas. Engaging in the consultation process alone does nothing to preclude harm or
24 avoid risk to endangered species and their habitat where the action continues during the
consultation period.

25 ⁴ The biological opinion for the 2000 total allowable catch (TAC) specifications (attached as
26 Exhibit 1) focuses on the effects of individual fisheries in and of themselves, instead of
27 examining the combined and cumulative effects of all of the groundfish fisheries conducted
28 pursuant to the FMPs. Exhibit 1 at 99-105, 108-109. In this sense, the 2000 TAC biological
opinion is for all intents and purposes the same as the biological opinion addressed in the Court's
most recent opinion, Greenpeace v. NMFS, 80 F. Supp.2d 1137 (W.D. Wash. 2000). Thus, any
conclusions reached in the 2000 TAC biological opinion have little bearing on the inquiry here:
whether implementation of the FMPs as a whole poses a threat of harm to endangered Steller sea
lions and their critical habitat, including possible jeopardy or adverse modification.

1 lion foraging areas, (4) whether the fishery operates at the same time sea lions forage, (5)
 2 whether the fishery operates at the same ocean depth range as sea lions forage, and (6) whether
 3 the fishery is temporally concentrated or dispersed. See Exhibit 12 at 6-7.

4 For the majority of groundfish fisheries, an examination of these factors indicates that the
 5 fishery is likely to adversely affect the western population of Steller sea lions. See Exhibit 12 at
 6 4-5. In the Bering Sea/Aleutian Islands (BSAI), the scientists answered "yes" to five or six of
 7 the questions for the pollock, Pacific cod, Atka mackerel, yellowfin sole, rock sole, greenland
 8 turbot, arrowtooth flounder, flathead sole, other flatfish, Pacific ocean perch, other red rockfish,
 9 sharpchin/northern rockfish, squid, forage species, salmon, herring, and halibut fisheries. Id. at
 10 4. The results were the same in the Gulf of Alaska (GOA) for the pollock, Pacific cod, Atka
 11 mackerel, flatfish (deep water), flatfish (shallow water), flathead sole, arrowtooth flounder,
 12 rockfish (other slope), rockfish (northern), Pacific ocean perch, rockfish (pelagic shelf), rockfish
 13 (demersal shelf), other species, forage complex, salmon, herring and halibut fisheries. Id. at 5.

14 Thus, according to the expert agency, in the year 2000 the vast majority of the groundfish
 15 fisheries, even when considered on a fishery by fishery basis, are likely to adversely affect the
 16 western population of Steller sea lions. See Exhibit 10 at 1; Exhibit 12 at 4-5.⁵ This
 17 determination is a far more substantial showing of harm than that required to demonstrate that
 18 the continued implementation of the FMPs, as a whole, poses a threat of harm to sea lions and
 19 their critical habitat. Marbled Murrelet, 83 F.3d at 1068. The inquiry into whether an injunction
 20 is warranted in this case must consider the combined and cumulative effects of all of the
 21 groundfish fisheries being prosecuted pursuant to the FMPs. NMFS' determination of individual
 22 adverse effects is, by itself, sufficient to support at least an injunction against groundfish trawl
 23 fishing in sea lion critical habitat until such time as the agency has completed an adequate
 24 biological opinion.

25
 26
 27 ⁵ The fisheries examined in the 2000 TAC biological opinion include pollock, Atka mackerel,
 28 Pacific cod, flatfish (including flathead sole, rock sole, greenland turbot, yellowfin sole,
 arrowtooth flounder, other flatfish), sablefish, rockfish (including Pacific Ocean perch,
 sharpchin/northern, pelagic shelf and demersal shelf rockfish), and "squid and other species."
 Exhibit 1 at 99-105.

1 2. Other Evidence Demonstrates That Implementation of the FMPs Likely Harms
 2 Steller Sea Lions by Permitting Groundfish Trawl Fisheries to Remove Steller
 3 Sea Lion Prey From Critical Habitat.

4 Had NMFS not determined already that the majority of the groundfish fisheries to be
 5 conducted in 2000 are likely to affect adversely sea lions and their critical habitat, other available
 6 evidence would establish the same point: the groundfish fisheries pose a threat of harm to Steller
 7 sea lions and their critical habitat sufficient to warrant injunctive relief.

8 a. *Steller Sea Lions Continue to Decline.*

9 Any discussion about harm to sea lions and their critical habitat must first recognize the
 10 perilous nature of their current status. Lavigne Declaration at ¶ 16.⁶ Over the last three decades,
 11 the western population of Steller sea lions has declined by approximately 85%. Greenpeace v.
 12 NMFS, 55 F. Supp.2d. 1248, 1254 (W.D. Wash. 1999). These drastic declines have reduced this
 13 endangered species to a level where the experts concluded in 1998 that “there is a high risk that
 14 the western population of Steller sea lions could become extinct within the foreseeable future if
 15 their decline is not abated and their rate of increase is not improved immediately.” S1-55 at 102
 16 (emphasis added).⁷ Population viability analyses conducted in 1993 indicated that the next 20
 17 years may be “crucial” for Steller sea lions. Id. at 60. However, the western population of
 18 Steller sea lions continues to decline.

19 The most recent published data examining population trends for the western stock of
 20 Steller sea lions are from surveys conducted in 1997 and 1998. See Exhibit 2. “Results of these
 21 most recent surveys indicate that the western stock of Steller sea lions in Alaska continued to
 22 decline during 1997 and 1998.” Id. at 15. In fact, “[t]he rate of decline for [adults and juveniles]
 23 increased from 1996 to 1998 at all trend sites (rookeries and haulouts). . . .” Id. (emphasis added).
 24 Counts of adults and juveniles at trend rookeries indicate declines of 12.2% from 1996, and 35%
 25 from 1990. Id. at iii. This translates to an estimated average annual rate of decline of 5.4% from
 26 1990 to 1998. Id. In the Kenai Peninsula to Kiska Island area, a sub-area within the Alaska

26 ⁶ The Declaration of David M. Lavigne, Ph.D, is submitted with this brief. Dr. Lavigne has
 27 conducted research on pinnipeds, including sea lions, and published numerous peer-reviewed
 28 scientific papers, technical reports, and articles concerning pinnipeds.

28 ⁷ Documents in the Administrative Record are cited by their administrative record number. S1-
 55 thus refers to document number 55 in supplement 1 of the administrative record.

1 portion of the western stock, the 1998 count for adults and juveniles showed a decline of 8.9%
2 from 1996, and 28.3% from 1990. *Id.* at iii-iv. "This general decline also was apparent in pup
3 production; as the total pup count for the western stock in Alaska declined by 19% from 1994 to
4 1998. Pup numbers have been in decline at least since 1990 for most of the western-stock
5 regions." *Id.* at 15 (citation omitted).

6 Given the already severely reduced population levels and the high risk of extinction in the
7 foreseeable future, S1-55 at 102, the continuing annual declines in the western population of
8 Steller sea lions must be reversed immediately. Within this context, each year is meaningful for
9 the survival and recovery of Steller sea lions. Lavigne Declaration at ¶¶ 19-21.

10 *b. The Groundfish Trawl Fisheries Catch Steller Sea Lion Prey.*

11 Sea lions are opportunistic feeders, eating a wide variety of prey species depending on
12 availability. The dominant prey species for Steller sea lions are pollock and Atka mackerel,
13 depending on location. In addition, sea lions consume a wide variety of other prey species,
14 including Pacific cod, flatfish, rockfish, halibut, salmon, crab, octopus, and squid. S1-55 at 52;
15 see also id. at 147-156, Table 6 (food habits data).

16 The majority of the species identified in the existing food habits data as sea lion prey
17 either are targeted directly by groundfish trawl fisheries or are caught incidentally as bycatch in
18 non-selective groundfish trawl nets. The major target species of the groundfish fisheries include
19 pollock, Pacific cod, Atka mackerel, flathead sole, rock sole, greenland turbot, yellowfin sole,
20 arrowtooth flounder, other flatfish, sablefish, and rockfish. See e.g., S3-19 at 146-148, Tables 2-
21 3 (1999 groundfish specifications). Additionally, most sea lion prey species are caught
22 incidentally by the groundfish trawl fisheries. Exhibits 4-7.⁸ For example, pollock, Atka
23 mackerel, and Pacific cod are all targeted in directed trawl fisheries, as well as caught
24 incidentally in trawl fisheries targeting other species. See e.g., S3-19 at 14 (pollock taken as
25

26 ⁸ Exhibit 4 consists of excerpts from a report prepared for the Alaska Department of Fish and
27 Game entitled "Discards in the Groundfish Fisheries of the Bering Sea/Aleutian Islands & the
28 Gulf of Alaska, 1995-1997." The tables are provided not to illustrate the amount of biomass that
is caught and discarded, but to illustrate which species have been caught incidentally by which
target fishery.

1 bycatch in trawl Pacific cod, rock sole, and yellowfin sole fisheries); S3-19 at 23 (Pacific cod
 2 taken as bycatch in trawl pollock, yellowfin sole, rock sole, Atka mackerel, shallow-water
 3 flatfish, arrowtooth flounder, and flathead sole fisheries); S3-19 at 51 (Atka mackerel taken as
 4 bycatch in the trawl Pacific cod and rockfish fisheries); see also S3-19 at 32 ("other" flatfish
 5 taken as bycatch in bottom trawl fisheries for other groundfish). Non-target species that appear
 6 to be important to sea lions, such as squid and octopus, also are caught as bycatch in groundfish
 7 trawl fisheries. S3-19 at 53-54; Exhibit 1 at 102.

8 *c. The Groundfish Trawl Fisheries Remove Sea Lion Prey from Designated*
 9 *Critical Habitat.*

10 Based on the importance of certain areas for Steller sea lions, NMFS designated critical
 11 habitat in 1993. AR-5. Designated critical habitat consists of about 120 rookeries and haulouts
 12 and the oceans within 20 nautical miles (nm) of the sites, and three aquatic foraging areas. Id. at
 13 45270-73; see also S1-55 at Figure 9 (map of critical habitat). The "single most important
 14 feature" of critical habitat is the availability of prey. S1-55 at 20; see also id. at 62 ("Prey
 15 resources are the most important feature of marine critical habitat."); AR-5 at 45270 ("Adequate
 16 food resources are an essential component of the Steller sea lion's aquatic habitat.").

17 As currently configured, the groundfish trawl fisheries remove huge volumes of sea lion
 18 prey from critical habitat. See Exhibit 8 at 4-5 (GOA 1997), 9-10 (GOA 1998), 14-15 (BSAI
 19 1997), 19-20 (BSAI 1998). More than half of the total observed trawl catch of groundfish in
 20 1997 and 1998 took place in critical habitat, the areas most essential to Steller sea lion recovery
 21 and survival. The percentages of catch taken in critical habitat for some key Steller sea lion prey
 22 in 1997 and 1998 are summarized below:

YEAR & AREA	ALL TRAWLS	POLLOCK TRAWLS	ATKA MACKEREL TRAWLS	PACIFIC COD TRAWLS
GOA 1997	58%	68%	98%	70%
BSAI 1997	52%	58%	81%	70%
GOA 1998	60%	75%	99%	53%
BSAI 1998	56%	62%	81%	66%

1 Exhibit 8 at 5, 10, 15, 20.⁹

2 Data from 1999 demonstrates that the groundfish fisheries continue to take high
3 percentages of their catch from critical habitat. The limits on catch in critical habitat imposed on
4 the Atka mackerel and pollock fleets in 1999 did not preclude trawling in critical habitat. See
5 S1-55 at 104 (describing Atka mackerel limits); Greenpeace, 55 F. Supp.2d at 1256-1257, 1260-
6 1263, 1264-1269 (describing pollock and Atka mackerel biological opinion, pollock Reasonable
7 and Prudent Alternatives (RPAs)); S5-38 at 55-61 (Revised Final RPAs). In fact, the
8 information available for the 1999 fishing season demonstrates that even for these two fisheries,
9 substantial levels of fishing continue to occur in critical habitat.¹⁰ The following table displays
10 the percent and metric tons of observed catch in critical habitat in 1999 for selected Steller sea
11 lion prey species:

AREA	POLLOCK	ATKA MACKEREL	PACIFIC COD
GOA percent	83.2 %	34.2 %	61.9 %
GOA metric tons	77,712 mt	89 mt	42,459 mt
BSAI percent	36.9 %	52.9 %	50.7 %
BSAI metric tons	350,914 mt	29,776 mt	79,287 mt

12 Exhibit 9 at 1, 8.

13
14
15
16
17
18 *d. The Removal of Sea Lion Prey from Designated Critical Habitat Poses a Risk of Harm.*

19 From the available information described above, it is clear that the groundfish trawl
20 fisheries both target and catch incidentally sea lion prey species, and that a significant portion of
21 that catch is removed from the sea lions' designated critical habitat. Given what is known about
22 the reasons for the sea lion decline, the ongoing implementation of the FMPs poses a threat of
23 harm to Steller sea lions and their critical habitat sufficient to warrant an injunction under the
24 ESA. Lavigne Declaration at ¶¶ 28-50; Marbled Murrelet, 83 F.3d at 1068.

25 ⁹ Pollock and Atka mackerel are dominant prey items for Steller sea lions. S1-55 at 52. Pacific
26 cod, the target of the second largest groundfish fishery in Alaska, S3-19 at 23, is also an
27 important prey species for Steller sea lions. See Exhibit 1 at 103 (Pacific cod "clearly" a
28 common prey item); S1-55 at 147-156, Table 6 (food habits data).

¹⁰ Plaintiffs have challenged NMFS' conclusion that the restrictions on the pollock fishery are
adequate to mitigate the jeopardy and adverse modification effect. Third Amended Complaint at
¶¶ 105-110 (filed 11/08/99).

1 “[T]he primary hypothesis for the continued decline of the western population of Steller
2 sea lions” is the lack of available prey, S1-55 at 103, which can result in decreased reproductive
3 success, and decreased juvenile survival. *Id.* at 46, 59, 63. Prey availability is important not
4 only for dominant prey items such as pollock and Atka mackerel, but also for secondary or
5 tertiary prey items, which are important to overall sea lion health and may act as a buffer to
6 significant changes in the abundance of any single prey. S1-190 at 1342, 1346-1347; see also
7 S1-55 at 53 (diet diversity beneficial); Greenpeace, 80 F. Supp.2d at 1150 (“[t]hat many of the
8 target species may not individually constitute a major prey source...does not mean the
9 cumulative impact of these fisheries is insignificant”).¹¹

10 The primary purpose of designated critical habitat for Steller sea lions is to protect the
11 availability of prey. S1-55 at 20; see also Greenpeace, 80 F. Supp.2d at 1149 (the effects of
12 implementation of the FMPs on critical habitat are a “crucial issue”). As illustrated by the tables
13 above and in Exhibits 8 and 9, the groundfish fisheries remove substantial amounts of Steller sea
14 lion prey from designated critical habitat. Such removals likely reduce prey availability and
15 decrease sea lion foraging success, and thereby cause harm. Lavigne Declaration at ¶¶ 38-39,
16 41-42, 47.

17 In addition to competition for prey in critical habitat, the potential effects of groundfish
18 trawling on sea lions include disturbance of normal sea lion foraging behavior, disturbance of
19 prey species behavior, changes in prey size structure, changes in prey age structure, changes in
20 marine community composition, and direct interaction with fishing gear leading to incidental
21

22
23 ¹¹ NMFS limited its earlier analysis of the Atka mackerel and pollock fisheries to the individual
24 effects of those specific fisheries. See e.g., S1-55 at 5-6 (describing the three proposed actions
25 under consideration in the biological opinion). The pollock and Atka mackerel biological
26 opinion did not consider the cumulative effects of the total removal of sea lion prey from critical
27 habitat, or even the combined effects of the two largest groundfish fisheries, pollock and Pacific
28 cod. Thus, the measures imposed to mitigate the effects of the pollock and Atka mackerel
fisheries on sea lions and critical habitat are not instructive of whether the combined effects of
the implementation of the FMPs threaten to harm sea lions or their critical habitat. Injunctive
relief measures addressing the adverse effects of groundfish trawl fishing, including those of the
pollock and Atka mackerel trawl fleets, are appropriate and warranted by NMFS’ authorization
of the groundfish fisheries in the absence of a comprehensive biological opinion.

1 injury or killing of sea lions. S1-55 at 81, 98; Lavigne Declaration at ¶ 43. As with competition
2 for prey, these effects are likely harmful. Id.

3 The combined harmful effects of the removal of important sea lion prey species from
4 critical habitat by multiple groundfish trawl fisheries are necessarily more significant than the
5 effects of any one fishery, and are likely to be quite substantial. Id. at ¶ 46. Given the
6 importance of availability of prey in critical habitat and the likely adverse effects of trawling in
7 critical habitat, the operation of the groundfish trawl fisheries in designated critical habitat this
8 year likely poses a serious threat of harm to Steller sea lions. Id. at ¶¶ 47, 48, 50.

9 e. *An Injunction Is Warranted Because the Groundfish Trawl Fisheries*
10 *Threaten Harm to Steller Sea Lions and Their Critical Habitat.*

11 Until NMFS addresses the potential effects of the implementation of the FMPs on sea
12 lions and their critical habitat, it cannot insure that the groundfish trawl fisheries will avoid
13 jeopardy to endangered Steller sea lions and adverse modification of their critical habitat. See
14 Greenpeace, 80 F. Supp.2d at 1147-48 (describing scope of forthcoming comprehensive
15 biological opinion). Plaintiffs have proved an ongoing violation of the ESA that will not be
16 cured "until such time as a comprehensive [biological] opinion adequately addressing the full
17 impact of the FMPs is completed." Greenpeace, 80 F. Supp.2d at 1150. This ongoing violation
18 is a proper basis for injunctive relief. "[U]ntil such time as a comprehensive opinion is in place,
19 this Court retains the authority to determine whether any continuing action violates the ESA and
20 can provide effective relief by enjoining it or remedying its effect." Id. at 1152.

21 Because sea lions appear to be declining as a result of food limitation and the importance
22 of prey availability in critical habitat, the combined effects of the groundfish trawl fisheries in
23 critical habitat likely cause serious harm to Steller sea lions. Lavigne Declaration at ¶ 47.

24 Because the western population of sea lions is suffering an estimated average annual decline of
25 5.4%, Exhibit 2 at iii, this threat must be addressed immediately. Lavigne Declaration at ¶¶ 20-
26 21, 49-50.

27 Based on the available evidence, an injunction against groundfish trawling in critical
28 habitat is warranted because it is the only way to protect against this harm:

1 The only means of avoiding the likely harm to sea lions caused by the ongoing
2 groundfish trawl fisheries in critical habitat is to avoid all trawl fishing in critical
3 habitat. The areas designated as critical habitat were selected precisely because
4 they were determined to be the most important foraging areas for Steller sea lions.
5 The importance of adequate food to the reproductive success of female sea lions
6 requires protection of the extensive foraging ranges of adult females, which are
7 represented in part by the designated critical at-sea foraging areas, as well as by
8 the 20 nautical mile zones around rookeries and haulouts. Absent the exclusion of
9 groundfish trawling from critical habitat, the fisheries this year threaten harm to
10 Steller sea lions by operating in and removing from sea lion critical habitat
11 substantial amounts of prey, thereby compromising foraging behavior and
12 success, and likely contributing to the continuing decline of this endangered
13 species.

14 Id. at ¶ 48. Permitting the groundfish fisheries to continue without further protective measures,
15 and in the absence of a completed and adequate comprehensive biological opinion, would turn
16 the ESA on its head, affording the fisheries the "highest of priorities" and placing the burden of
17 the agency's continuing legal violation on endangered Steller sea lions, an impermissible result.

18 D. THE GROUND FISH TRAWL FISHERIES MAY NOT CONTINUE UNDER
19 SECTION 7(D).

20 Recognizing that it is in violation of the ESA, NMFS relies on section 7(d) in issuing the
21 total allowable catch (TAC) specifications for the 2000 groundfish fisheries. See Rosenberg
22 Declaration at ¶¶ 5, 6 (filed 2/11/00); Exhibit 13 at 8285-8286; Exhibit 14 at 8300-8301. By so
23 doing, NMFS seeks to use section 7(d) as a license to authorize during the consultation period
24 the very groundfish fisheries that the agency itself has admitted may harm sea lions and their
25 critical habitat. Such an approach to section 7(d) is contrary to the Endangered Species Act and
26 the relevant caselaw.

27 Section 7(a)(2) prevents an agency from taking any action that it cannot insure is not
28 likely to cause jeopardy or adverse modification. 16 U.S.C. § 1536(a)(2). Section 7(d) does not
excuse agencies from their obligation to comply with section 7(a)(2) while consultation is
ongoing. See, e.g., Conner, 848 F.2d at 1455 n.34. NMFS itself recognized that section 7(d) is a
limit, rather than a license, when together with the Fish and Wildlife Service, it enacted
regulations to implement the provision in 1986. See 51 Fed. Reg. 19926, 19940 (1986) ("section
7(d) is strictly prohibitory in nature"). Thus, section 7(d) is an additional limitation on agency

1 action during the consultation process, preventing activities outside of the proposed action that
2 irreversibly or irretrievably commit the agency and have the effect of foreclosing the formulation
3 or implementation of reasonable and prudent alternatives, even if these other activities do not
4 have direct effects on listed species or critical habitat. 16 U.S.C. § 1536(d).

5 By insuring that agencies do not take steps during the consultation process that may
6 compromise the outcome, section 7(d) protects the integrity of the consultation. See, e.g., H.R.
7 Rep. No. 1625, 96th Cong., 2d Sess. 20 (1978) (section 7(d) "further strengthen[s] the
8 consultation process"). Thus, section 7(d) prevents agencies from taking actions that commit it
9 to a project, such as making financial investments or entering contracts or granting leases, while
10 the agency is still determining the project's effects on listed species or critical habitat. See, e.g.
11 Natural Resources Defense Council v. Houston, 146 F.3d 1118, 1128 (9th Cir. 1998) (section
12 7(d) violated where agency executed contracts prior to completion of formal consultation); North
13 Slope Borough v. Andrus, 486 F. Supp. 332, 356 (D.D.C. 1979) (purpose of § 7(d) is "to prevent
14 Federal agencies from 'steamrolling' activity in order to secure completion of the projects
15 regardless of their impact on endangered species"), aff'd in part, rev'd in part, 642 F.2d 589
16 (D.C. Cir. 1980).

17 The Ninth Circuit's discussion of sections 7(a)(2) and 7(d) in Conner emphasized the
18 additive nature of section 7(d). In Conner, the action agency argued that it could go forward
19 with the action in the absence of a completed adequate consultation, because it was not
20 irreversibly committing any resources. 848 F.2d at 1455 n.34; see also Rosenberg Declaration at
21 ¶ 5 (filed 2/11/00) (NMFS making same argument in the instant case). The Court soundly
22 dismissed this argument:

23
24 Section 7(d) does not amend section 7(a) to read that a comprehensive biological
25 opinion is not required before the initiation of agency action so long as there is no
26 irreversible or irretrievable commitment of resources. Rather, section 7(d)
27 clarifies the requirements of section 7(a), ensuring that the status quo will be
28 maintained during the consultation process.

1 Conner, 848 F.2d at 1455 n.34. The Court enjoined further activity until the action agency
 2 completed an adequate biological opinion. Id. at 1462, 1458, 1458 n.41. Thus, the Ninth Circuit
 3 has made clear that section 7(d) does not supplant section 7(a)(2) and strict judicial enforcement
 4 of the consultation process as the primary safeguard against unlawful injury to endangered
 5 species and their habitat. Here, as in Conner, an injunction should issue under section 7(a)(2)
 6 until NMFS has completed an adequate biological opinion addressing the effects of continued
 7 implementation of the FMPs. See Conner, 848 F.2d at 1455 (Ninth Circuit refused "to carve out
 8 a judicial exception to ESA's clear mandate that a comprehensive biological opinion ... be
 9 completed before initiation of the agency action," despite assurances that adequate protections
 10 were in place and despite promises of future ESA compliance (emphasis added)).

11 Sierra Club v. Marsh, 816 F.2d 1376 (9th Cir. 1987), counsels the same conclusion.

12 Sierra Club concerned the effects of a federal project on two species of endangered birds. Id. at
 13 1378. The project consisted of construction of a flood control channel that would destroy more
 14 than 40 acres of the birds' habitat, as well as construction of a highway and an interchange, and
 15 the widening of an interstate. Id. at 1379, 1378. The expert agency issued a no jeopardy opinion
 16 premised on acquisition and preservation of 188 acres of habitat to replace that lost by the flood
 17 control channel. Id. at 1379. When the Corps of Engineers began construction on the project
 18 prior to acquiring the replacement habitat, and refused to reinstate consultation, plaintiffs sued to
 19 enjoin the project. Id. at 1381.

20 The Ninth Circuit held that the Corps had committed both substantive and procedural
 21 violations of section 7(a)(2) of the ESA. Id. at 1386, 1388. To remedy the substantive violation,
 22 the Court enjoined any further construction in the birds' habitat unless and until the Corps
 23 acquired the replacement habitat, and thereby met its duty to insure against jeopardy and adverse
 24 modification: "The institutionalized caution mandated by section 7 of the ESA requires the
 25 [Corps] to halt all construction that may adversely affect the habitat until it insures the
 26 acquisition of the mitigation lands or modifies the project accordingly." Id. at 1389; 16 U.S.C. §
 27 1536(a)(2). Thus the direct impacts to the birds' habitat were enjoined under section 7(a)(2).
 28

1 The Court further recognized that a broader injunction halting work on the other
2 components of the project, even those that did not directly affect the birds' habitat, was
3 appropriate to remedy the procedural violation. Sierra Club, 816 F.2d at 1389. While the relief
4 afforded by section 7(a)(2) specifically was directed towards the birds' habitat, the potential
5 relief afforded by section 7(d) was much broader, because irreversible or irretrievable
6 commitments to the project that might foreclose alternatives were not limited to activities within
7 the birds' habitat. The Court noted that once consultation had been reinitiated, the "statutory
8 prohibition of section 7(d)" would apply, but only to those parts of the project that did not
9 directly affect the birds' habitat. Id. at 1389. In contrast, the Court appropriately keyed the
10 duration of the 7(a)(2) injunction against work in the birds' habitat to the Corps meeting its duty
11 to insure against jeopardy and adverse modification by acquiring the replacement habitat. Id. at
12 1389. As in Sierra Club, the action before the Court in the instant case is one that occurs in
13 critical habitat and directly affects the value of that habitat for endangered sea lions. Thus, the
14 proper analysis of whether an injunction is warranted is under section 7(a)(2), not section 7(d).

15 Pacific Rivers Council v. Thomas, 30 F.3d 1050 (9th Cir. 1995), is not to the contrary.
16 Pacific Rivers Council concerned the duty to consult on Land and Resource Management Plans
17 (LRMPs). While the case was being litigated, the Forest Service suspended all activities it
18 determined were "likely to adversely affect" listed species or critical habitat, id. at 1052, as
19 NMFS should have done here. Thus, the only activities before the Ninth Circuit were those that
20 were "not likely to adversely affect" listed species or their habitat. Id. Based on the Forest
21 Service's admission that such activities "may affect" endangered salmon or their habitat, the
22 Court enjoined all of these activities until the Forest Service initiated consultation on the
23 LRMPs. Id. at 1056. After consultation had been initiated, the district court would determine
24 whether any of the "not likely to adversely affect" activities could go forward under section
25 7(d).¹² Id. at 1057. The 7(d) analysis was applied not to the entire agency action subject to the

26
27 ¹² The Court specifically noted "that timber sales constitute *per se* irreversible and irretrievable
28 commitments of resources under § 7(d) and thus could not go forward during the consultation
period." Id. at 1057 (citation omitted). Thus, even "not likely to adversely affect" timber sales
are *per se* violations of section 7(d). Id.

1 pending consultation, as NMFS would have this Court do, but rather to a subset of actions that
2 were not likely to adversely affect listed species or critical habitat. Id. Pacific Rivers Council
3 neither counsels, much less allows, actions that may adversely affect and harm a listed species to
4 proceed under section 7(d).

5 Section 7(d) is a prohibition on activities that may create momentum toward harm to
6 endangered species and their habitat before the completion of consultation, rather than
7 permission to proceed with harmful activities that directly affect the species while consultation is
8 still ongoing. Mere initiation of consultation on the effects of the FMPs does not reduce the
9 fundamental section 7(a)(2) protections of the ESA. Section 7(d) does not shield harmful
10 activities from the prohibitions in section 7(a)(2), and reference to section 7(d) cannot cure
11 NMFS' section 7(a)(2) violation.

12 E. IF THE COURT FINDS THAT THE SECTION 7(D) ANALYSIS APPLIES IN THIS
13 CASE, SECTION 7(D) PROHIBITS THE CONTINUED IMPLEMENTATION OF
14 THE FMPs PENDING THE COMPLETION OF AN ADEQUATE BIOLOGICAL
15 OPINION.

16 Even if the Court determines that section 7(d) controls the inquiry in this instance, an
17 injunction is warranted under section 7(d) because the continued implementation of the FMPs
18 constitutes an irreversible or irretrievable commitment that has the effect of foreclosing
19 reasonable and prudent alternatives. 16 U.S.C. § 1536(d). The following discussion assumes for
20 purposes of argument that section 7(d) is the basis for an injunction in this case, rather than
21 section 7(a)(2).

22 Where the action subject to consultation is occurring at the same time as the consultation,
23 such action is necessarily an irreversible or irretrievable commitment that has the effect of
24 foreclosing alternatives, because one of the alternatives that must be available for consideration
25 during consultation is the option to not commit the resources in the first place.

26 Continued implementation of the FMPs through prosecution of the groundfish fisheries
27 this year constitutes an irreversible and irretrievable commitment of resources that has the effect
28 of foreclosing alternatives. Trawling that removes prey or otherwise makes prey unavailable for
sea lions this year constitutes an irreversible and irretrievable commitment because, from the

1 perspective of foraging sea lions, the prey cannot be replaced. That similar numbers of fish
2 might (or might not) be available next year does nothing to mitigate the effects of the removal or
3 disruption of their biomass in this year.¹³ See e.g., Pacific Rivers Council v. Thomas, 873 F.
4 Supp. 365, 371 (D. Idaho 1995) ("the potential harm to endangered species satisfies the
5 requirement of showing irreparable injury"); Loggerhead Turtle v. County Council of Volusia
6 County, Florida, 896 F. Supp. 1170, 1178 (M.D. Fla. 1995) ("any threatened harm is per se
7 irreparable harm").

8 Proceeding with the fisheries forecloses the formulation and implementation of
9 reasonable and prudent alternatives because the agency will not complete its examination of the
10 effects of the fisheries until this year's fishing has been concluded. A conclusion in December
11 2000 that implementation of the FMPs jeopardizes sea lions and adversely modifies their critical
12 habitat will be too late to affect this year's fishing. The removal of sea lion prey from critical
13 habitat by this year's fishing likely will result in reduction in food availability, decreased sea lion
14 foraging success, decreased reproductive success, and other negative impacts to sea lions this
15 year. Lavigne Declaration at ¶ 43, 47, 48. NMFS can never implement an alternative that
16 replaces the fish removed from critical habitat this year and can never implement an alternative
17 that precludes negative effects from this year's fishing, because this year will have passed before
18 the agency completes its analysis.

19 Where courts permit activities to go forward during the consultation period pursuant to
20 section 7(d), the facts demonstrate that the agency action at issue will not harm listed species or
21 critical habitat. For example, paving a road during consultation was not a violation of section
22

23 ¹³ In Sierra Club v. Marsh, which concerned the availability of replacement habitat, the Ninth
24 Circuit rejected the agency's argument that "positive management ... could be postponed for
25 another year" without jeopardizing the listed bird at issue. 816 F.2d 1376, 1385 (9th Cir. 1987).
26 According to the agency's arguments "indicate a misunderstanding of the obligation section
27 7(a)(2) imposes on Federal agencies." Id. "At present, construction is eliminating some of that
28 habitat. The [Corps] is allowing the project's adverse effects to accumulate without
implementing the mitigation measures or making certain they will occur." Id. The Court's
reasoning applies to the instant case. Here, NMFS is presently implementing the FMPs,
allowing its effects to accumulate to the detriment of sea lions, based on promises to complete
the consultation next year and implement any necessary protective measures at that time. This
approach is flatly contrary to the ESA.

1 7(d) where paving the road was not only not likely to harm a listed species or its habitat, but was
2 specifically designed to improve habitat conditions of the listed species. Forest Conservation
3 Council v. Espy, 835 F. Supp. 1202, 1216 (D. Idaho 1993); aff'd 42 F.3d 1399 (9th Cir. 1994)
4 (table). The construction of a municipal sewage discharge tunnel that was not likely to adversely
5 affect listed species was not a violation of section 7(d). Bays' Legal Fund v. Browner, 828 F.
6 Supp. 102, 110 (D. Mass. 1993). Granting a right-of-way permit was not an irreversible or
7 irretrievable commitment where the permit explicitly forbade proceeding without completion of
8 the biological opinion. No Oilport! v. Carter, 520 F. Supp. 334, 364-65 (W.D.Wash. 1981).
9 There is simply no precedent for an argument that section 7(d) permits all activities authorized
10 by the FMPs to go forward during consultation on the FMPs themselves, particularly where
11 those activities are likely to harm sea lions and their critical habitat.

12 The ongoing implementation of the FMPs constitutes an irreversible or irretrievable
13 commitment of resources that has the effect of foreclosing alternatives because proceeding with
14 the action in this case likely causes harm to listed species and critical habitat. Any other
15 conclusion would convert section 7(d) from a protective limit on agency action to a license to
16 harm listed species and habitat during consultation, placing the burden on plaintiffs to justify
17 protective measures, and the burden on sea lions to endure their absence. This approach flatly
18 violates the law. 16 U.S.C. § 1536 (a)(2). The very purpose of the Endangered Species Act is to
19 make conservation of endangered species and their critical habitat the highest of priorities.¹⁴
20 TVA, 437 U.S. at 174. Continuing to authorize the entire groundfish fisheries under section 7(d)
21 while consultation is ongoing effectively guts the ESA's consultation requirement and is contrary
22 to the procedures designed by Congress. The whole point of consultation is to give the expert
23 agency the chance to make a determination about the risks of a project before harm occurs. If
24

25
26
27 ¹⁴ "The burden is not upon someone else to demonstrate that there will be an adverse impact. It
28 may well be true that [the agency] was justified in concluding that no adverse impact had been
demonstrated, but the question is whether it had met its burden of insuring that there will be no
jeopardy. Unless [the agency] has done that, it has not complied with the Act." Nebraska v.
Rural Electrification Admin., 12 ERC 1156, 1171 (D.Neb. 1978).

1 the Court permits NMFS to abuse § 7(d), sea lions are effectively denied the protection of the
2 ESA during the pendency of the consultation.

3 **CONCLUSION**

4 The Endangered Species Act requires injunctive relief to avoid threats of harm to Steller
5 sea lions. The available evidence establishes the ongoing groundfish trawl fisheries, at least
6 within the designated critical habitat of the sea lions, pose a threat of harm to sea lions and their
7 critical habitat. This showing is more than adequate to warrant an injunction against groundfish
8 trawl fishing in critical habitat. For these and the other reasons stated, the Court should grant
9 Plaintiffs motion for injunctive relief under the Endangered Species Act and enter Plaintiffs'
10 proposed injunction until NMFS prepares an adequate comprehensive biological opinion on the
11 Fishery Management Plans.

12 Respectfully submitted this 30th day of March, 2000.

13
14
15 **TODD D. TRUE (WSB #12864)**
16 **Earthjustice Legal Defense Fund**
17 **705 Second Avenue, Suite 203**
18 **Seattle, WA 98104-1711**
19 **(206) 343-7340**
20 **Local Counsel for Plaintiffs**

21 **JANIS SEARLES (ASB #9606027)**
22 **Earthjustice Legal Defense Fund**
23 **325 Fourth Street**
24 **Juneau, AK 99801-1145**
25 **(907) 586-2751**

26 **PETER VAN TUYN (ASB #8911086)**
27 **JACK K. STERNE (ASB #9905010)**
28 **Trustees for Alaska**
1026 West 4th Avenue, Suite 201
Anchorage, AK 99501
(907) 276-4244

Attorneys for Plaintiffs

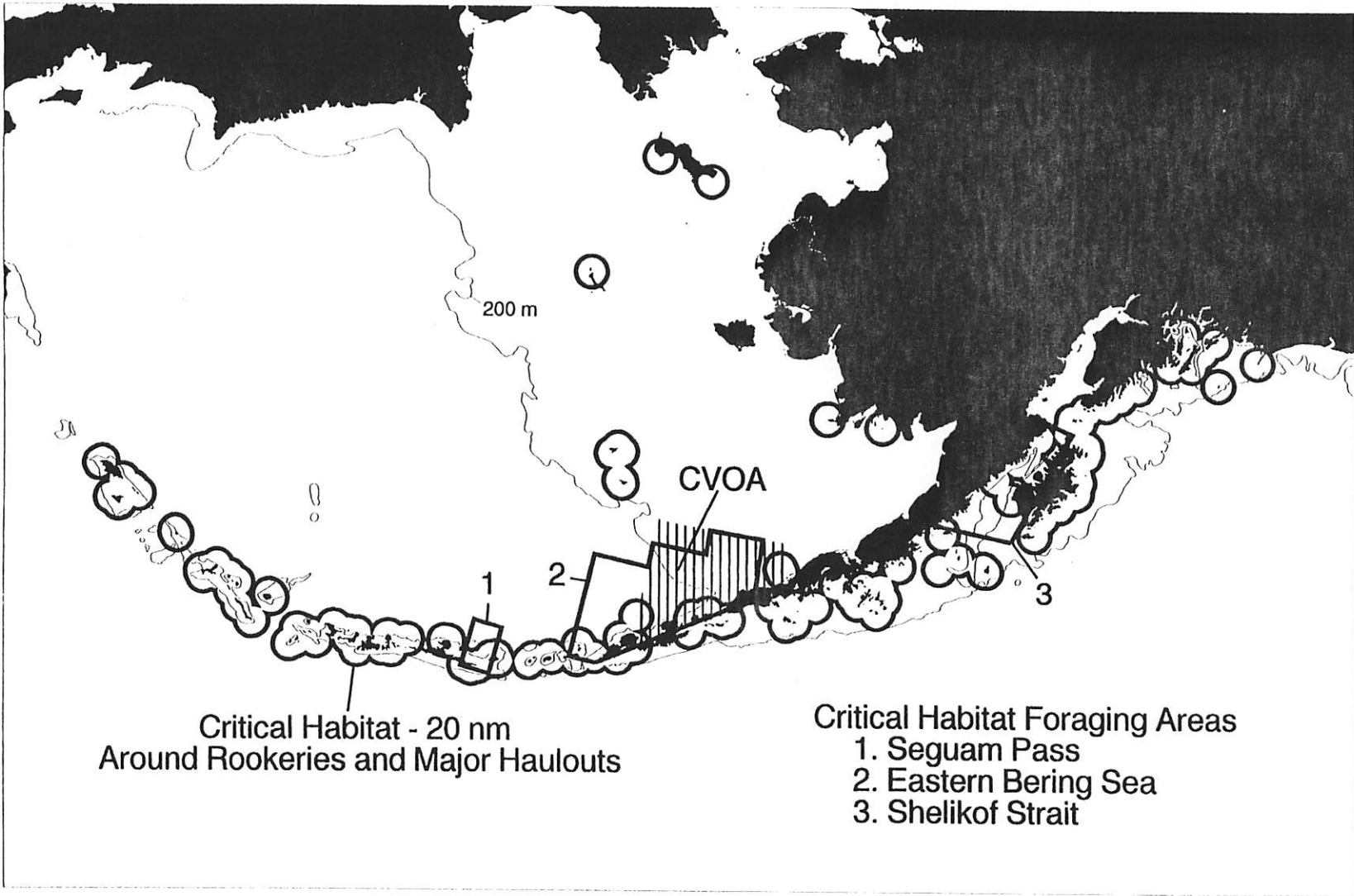


Figure 9. Critical habitat of the western population of Steller sea lions.

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]

BILLING CODE 3510-22-F

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 Salvesson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21868, 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 radius. 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, Mitrofanina 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 Mitrofanina 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.I.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.I.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 than 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 unnecessary 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 vcvccpollock 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. 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			
Tigaida/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	.....
Chemabura	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	10	.....
Atkins	55 03.50 N	159 18.50 W	.....	.....	10	10	10
Spitz	55 46.80 N	158 53.20 W	.....	.....	10	10	.....
Mitrofanía	55 50.00 N	158 42.00 W	.....	.....	10	10	.....
Kak	56 17.30 N	157 50.10 W	.....	.....	10	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	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	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	10	.....
Latax Rocks	58 40.10 N	152 31.30 W	.....	.....	10	10	.....
Ushagat/SW	58 54.75 N	152 22.20 W	.....	.....	10	10	.....
Ugak	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10	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 (Mamot)	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
Perf	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	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	.....	.....	10	10	.....
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	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 prohib- ited 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.

[FR Doc. 00-1708 Filed 1-20-00; 3:26 pm]

BILLING CODE 3510-22-P

(1) For agreements that provide credit toward SDB subcontracting goals for costs incurred under the Program, to the Director, SADB, OUSD (AT&L), and the Defense Contract Management Command (DCMC) administrative contracting officer.

(2) For agreements that provide for reimbursement of costs incurred under the Program, to the Director, SADB, OUSD (AT&L), the contracting officer, the DCMC administrative contracting officer, the program office, and the cognizant Director, SADB.

I-112 Agreement reviews.

The Defense Contract Management Command will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protégé firm in accordance with the mentor-protégé agreement and applicable regulations and procedures;

(b) Whether the mentor firm and protégé firm accurately reported progress made by the protégé firm in employment, revenues, and participation in DoD contracts during the Program participation term and for 2 fiscal years following the expiration of the agreement; and

(c) The amount of reimbursement, if any, that the mentor firm is eligible to receive in the remaining Program participation term of the agreement.

[FR Doc. 00-2946 Filed 2-9-00; 8:45 am]

BILLING CODE 5000-04-M

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; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the emergency interim rule to implement reasonable and prudent alternatives 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

their critical habitat that was published in the Federal Register on January 25, 2000.

DATES: Effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7650.

SUPPLEMENTARY INFORMATION: An emergency interim rule was published in the Federal Register on January 25, 2000 (65 FR 3892), implementing reasonable and prudent alternatives 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 their critical habitat.

Correction

PART 679—[CORRECTED]

On page 3902, in Table 20 to 50 CFR part 679, titled Steller Sea Lion Protection Areas in the Aleutian Islands Subarea:

In the entry for "Seguam Island", in the fifth column of the table, remove the Longitude "172 33.06 W", and add in its place "172 33.60 W".

Dated: February 3, 2000.

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 00-3004 Filed 2-4-00; 4:46 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223348-9348-01; I.D. 020700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the

offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.L.T.), February 7, 2000, until 2400 hrs, A.L.T., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(i), the interim Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area was established as 473 metric tons (mt), by the Interim 2000 Harvest Specifications of Groundfish for the GOA (65 FR 65, January 3, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 450 mt, and is setting aside the remaining 23 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the interim amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

C-3

April 10, 2000

Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Dear Rick,

I have enclosed a discussion paper describing analyses for the BSAI and GOA cod fisheries, and their potential to compete with Steller sea lions. The need for these analyses stems from issues identified in the ESA section 7 consultation (December 23, 1999) on the 2000 TAC specifications that the American Fisheries Act. We are currently working on the analyses, and expect to report the results to the Council in June of this year. I will be available at this (April) Council meeting to discuss our general concerns. I also request that if you or members of the Council have information or ideas that should be included in these analyses, please provide that information to me or my staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Pennoyer".

Steven Pennoyer
Regional Administrator



**A DISCUSSION PAPER ON POTENTIAL INTERACTIONS
BETWEEN STELLER SEA LIONS AND THE BSAI AND GOA
PACIFIC COD FISHERIES**

Protected Resources Division
Alaska Region
National Marine Fisheries Service

I. INTRODUCTION

On December 23, 1999, NMFS completed a Biological Opinion on three activities:

- 1) Authorization of the BSAI groundfish fisheries based on TAC specifications recommended by the North Pacific Fishery Management Council (Council) for 2000;
- 2) Authorization of the GOA groundfish fisheries based on TAC specifications recommended by the Council for 2000; and
- 3) Authorization of both BSAI and GOA groundfish fisheries based on statutes, regulations, and management measures to implement the American Fisheries Act of 1998.

Within the Opinion, NMFS identified issues of concern with respect to the GOA and BSAI Pacific cod fisheries, and their potential effects on the western population of Steller sea lions. In particular, the available evidence evaluated in the Opinion suggested a potential for competition between the fisheries and sea lions. The evidence was not conclusive, but indicated a need for further evaluation to determine if competitive effects occur and are likely to cause jeopardy or destruction/ adverse modification.

This discussion paper provides a preliminary review of the information summarized in the Opinion to explain to the Council and the interested public 1) the basis for NMFS's concerns and 2) additional analyses and assessment that NMFS believes necessary to insure that the cod fisheries do not jeopardize the western population of Steller sea lions or destroy/adversely modify its critical habitat.

II. BACKGROUND

The foraging patterns of Steller sea lions are central to any discussion of the potential for interaction between this species and fisheries. The available information is sufficient to begin a description of their foraging patterns. The emerging picture appears to be that:

- Steller sea lions tend to be relatively shallow divers but are capable of (and apparently do) exploit deeper waters (e.g., to beyond the shelf break);
- Steller sea lions consume a variety of demersal, semi-demersal, and pelagic prey, with prey selection also varying by age, sex, site, season, reproductive status, prey availability; at present, pollock and Atka mackerel appear to be their most common prey;
- diet diversity may influence status and growth of Steller sea lion populations;

Potential Interactions of Sea Lions and Cod Fisheries

- the life history and spatial/temporal distribution of important prey species are likely important determinants of sea lion foraging success;
- foraging sites relatively close to rookeries may be particularly important during the reproductive season when lactating females are limited by the nutritional requirements of their pups;
- and the availability of prey away from rookeries may also be crucial in that they allow sea lions to take advantage of other food sources, thereby mitigating the potential for intraspecific competition for prey in the vicinity of rookeries and haulouts.

III. POTENTIAL EFFECTS

A. The potential for competition

These questions must be addressed to evaluate the potential for competition:

- 1) Are Steller sea lions food-limited? The best available evidence indicates food limitation remains the primary hypothesis for the ongoing decline of the species.
- 2) Do Steller sea lions and the cod fisheries use the same cod resource? The available evidence suggests that cod is a common prey item for Steller sea lions. Cod appears to be a more important part of the sea lion diet in winter than in summer, and this seasonal distinction may be more pronounced in the GOA than in the BSAI
- 3) Does removal of the resource by the fisheries reduce the prey available to Stellers sea lions?

Four additional questions have been used to determine if sea lions and the fisheries are using the same cod resource.

- a) Do the fisheries and sea lions operate in overlapping depth ranges? The fishery could compete with sea lions if it takes cod from depths within the range of diving and foraging sea lions.
- b) Do the size distributions of cod taken by the fisheries overlap with the size of cod taken by sea lions?
- c) Do the fisheries and sea lions overlap geographically?

The cod catch from Steller sea lion critical habitat in the BSAI region has increased from less than 30,000 mt in the mid 1980s to over 120,000 mt in, or to about 50% of total catch in 1998. In the GOA, the amount of cod catch from Steller sea lion critical habitat increased from less than 12,000 mt prior to 1988 to about 40,000 mt for 1995 to 1998, or almost 80% in 1992, and then has varied between about 60% to 67% from 1994 to 1998. The distributions of the cod catch indicate a greater concentration of the trawl and pot fisheries in critical habitat compared to the longline fisheries, particularly in the BSAI region. In the Aleutian Islands region, both the trawl and longline cod fisheries are concentrated within Steller sea lion critical habitat. These data

Potential Interactions of Sea Lions and Cod Fisheries

are sufficient to demonstrate a considerable spatial overlap of the cod fisheries with Steller sea lion critical habitat.

d) Are the fisheries concentrated temporally, particularly in the winter months?

For competition to occur, the removal of cod by the fishery must reduce their availability to sea lions. In the pollock and Atka mackerel cases, this concept was addressed by evaluating available information for evidence of localized depletion of the resource. At present, the available evidence does not confirm that such localized depletions occur for the cod fisheries.

B. Needed analyses

The above information indicates that (1) cod are a common prey of Steller sea lions, particularly in the winter, (2) relatively large portions of the fisheries occur in Steller sea lion critical habitat, (3) the fisheries occur at relatively shallow depths well within the range of Steller sea lions, and (4) portions of the fisheries (trawl and pot fisheries in the BSAI and trawl, pot, and longline fisheries in the GOA) are temporally concentrated in the late winter/spring period when sea lions may be particularly sensitive to reductions in availability of prey.

However, the information available is not sufficient to determine if competition occurs to an extent that would appreciably reduce the likelihood of survival and recovery of the Steller sea lion in the wild or diminish the value of critical habitat for the survival and recovery of the sea lions. As described above, at least two additional analyses are needed to better assess the potential for competition.

First, the sizes of cod taken by Steller sea lions must be evaluated with more precision. If sea lions and the fisheries consume cod of the same or overlapping sizes, then competition is more likely.

Second, the likelihood of fisheries-induced localized depletion must be evaluated to indicate whether removals by the fishery may reduce the foraging success of sea lions. Analyses of the potential for localized depletion may vary by gear type, and may not be possible for each gear type. Evidence of declining catch per unit effort or locally excessive harvest rates may indicate localized depletion is occurring.

IV. RECOMMENDATION

NMFS is conducting the above analyses to better evaluate the potential for competition between the cod fisheries and Steller sea lions. Results of these analyses are expected before June. If, at the completion of those analyses, NMFS determines that the evidence is sufficient to suggest precautionary adjustments to the cod fisheries, then, NMFS will return to the Council in June with an initial environmental assessment and a request for Council participation in determining possible remedies. In general, such remedies may be similar to those sought in the pollock and Atka mackerel fisheries. That is, they may focus on general principles of spatial and temporal dispersion, and protection of prey resources around rookeries and haulouts.

PROTOCOL

**of the Fifteenth Working Group Meeting
under Project 02.05-61, "Marine Mammals,"
under Area V of the U.S.-Russia Agreement on Cooperation
in the Field of Environmental Protection**

**Petropavlovsk-Kamchatskiy, Russia
November 9-13, 1999**

The Fifteenth U.S.-Russia Marine Mammal Working Group Meeting was held in Petropavlovsk-Kamchatskiy, Russia, during November 9-13, 1999 under the co-chairmanship of Thomas R. Loughlin (U.S.) and Valeriy A. Vladimirov (Russia), the Project Co-Leaders.

Representing the Russian side were: Valeriy A. Vladimirov (Delegation Leader), Aleksandr I. Boltnev, Yuriy A. Bukhtiarov, Aleksandr M. Burdin, Vladimir N. Burkanov, Fridrikh G. Chelnokov, Vladimir A. Dudnikov, Sergei I. Kornev, Vladimir V. Melnikov, Yuriy I. Nechitailov, Gennadiy A. Nesterov, Viktor S. Nikulin, Nikolai N. Pavlov, Vladimir G. Rezvanov, Ilya N. Shevchenko, Andrei I. Testin, Vladimir V. Vertyankin, Sergei V. Zadalskiy, Sergei V. Zagrebelniy, and Vyacheslav A. Zemskiy.

Representing the United States side were: Thomas R. Loughlin (Delegation Leader), Robert L. Brownell, Rosa H. Meehan, Brent S. Stewart, David E. Withrow, and Peter B. Ward.

A moment of silence was observed in memory of two world renowned scientists who passed away since the Fourteenth Marine Mammal Working Group Meeting: Dr. Gerald W. Garner, a leading U.S. polar bear and walrus biologist, and Russian Academician Vladimir E. Sokolov, a brilliant specialist on animal morphology, and initiator of the marine mammals project.

SEA OTTER

Dr. Meehan reported on the substantial decline of sea otters in the Aleutian Islands and the need for a broad population survey. She noted that native hunters trained in standard necropsy techniques provide samples to a central collection, which are available to other researchers.

Dr. Kornev reported the results of a summer 1999 aerial and vessel census off Kamchatka and the northern Kuril Islands. Despite an inadequate survey, abundance for the past 2 years has not changed substantially and numbers approximately 11,585 sea otters. He also reported an unusually large mortality event in July 1997 in Vestnik Bay, Kamchatka, in which contusions were observed on the dead otters and that were likely caused by some sort of underwater explosion. Clinical tests of materials for viral and bacterial pathogens are now being investigated in the U.S. Mr. Zagrebelniy noted that an analysis of the age-sex structure of moribund sea otters suggests that the Bering Island population is still young, though abundance is evidently stabilizing.

PINNIPEDS

WALRUS

Dr. Meehan reported on a planned workshop to develop an appropriate census technique and population indices for Pacific walrus. Both harvest and haul-out monitoring will continue with hopes to expand joint projects with Russian colleagues.

Mr. Zagrebelniy reported that an increase in frequency of dead walrus on the Commander Islands coastline over the last 10 years is related to walrus migration, and with changes in the direction of water currents around the islands.

Mr. Testin reported the results of research conducted by KamchatRybVod in 1992-1999 at Pacific walrus haul-outs on north-east Kamchatka where a significant reduction in animal abundance was observed, especially in the southern part of its range. The most likely cause is a redistribution of abundance in the Bering and Chukchi Seas due to changes in climate and environment, especially ice conditions in the 1990s.

Mr. Bukhtiarov discussed research on breeding periodicity of Pacific walrus that had shown that in normal conditions when the female doesn't lose her pup and raises it to the age of two, the next pup will be born in three years.

TRUE SEALS

Dr. Stewart summarized the status of collaborative research with Dr. G.A. Klevezal (Russia) on age determination and tooth structures of northern elephant seals and with Drs. E. Petrov and A. Baranov on the foraging ecology, immunogenetics, and disease of Baikal seals. He noted the need for Baikal seal abundance surveys. It was suggested that satellite-based remote sensing technologies be jointly examined to accommodate common interests of demography and population vitality of seals in Lake Baikal and the Caspian Sea.

Mr. Withrow discussed current and planned studies at the National Marine Mammal Laboratory (NMML) on ice seals in the U.S. Chukchi and Beaufort seas. These studies include determination of factors to correct population surveys for variable density, distribution, and haul-out patterns for ringed seals, and harvest monitoring and sample collection by Alaska native subsistence hunters. He also discussed the assessment of Alaskan harbor seals, including a study to estimate the proportion of seals not counted during aerial assessment surveys for harbor seals on glacial ice.

Dr. Burkanov noted that several larga and ribbon seals surveys were conducted on the ice of Karaginskiy Bay in spring 1998. Densities of these seals were relatively low. He stressed the need for population surveys because they have not been conducted during the past 20 years.

Mr. Bukhtiarov reported on research of the morphological characteristics of ringed seals of the Bering Sea conducted by the Magadan branch of TINRO in 1998-1999. The research confirmed the theory concerning the presence in the Bering Sea of two ecotypes characteristic of near-shore

ice in bays and open sea.

Dr. Brownell discussed the need to better understand the conservation status and decline of the Caspian seal and presented new information on diseases and mortality in this species. No population survey has been conducted in over 10 years.

EARED SEALS

Dr. Boltnev noted that the abundance of the Commander Islands population of fur seals declined by 11.3% between 1989 and 1998. This decline is continuing at all four Commander Islands haul-outs. Data were gathered on the size of the bachelor and yearling fur seal harvest, and also on the results of pup mortality research, age structure of breeding females, and fur seal foraging behavior by using recorders.

Dr. Vladimirov reported the abundance of the fur seal population at Turyuleny Island (Sea of Okhotsk) has grown consistently since 1996 and pup production for this period increased more than 30%.

Dr. Loughlin reported results of northern fur seal research conducted by the NMML and its collaborators during 1998 and 1999, and results from telemetry studies of subadult males from St. Paul Island during 1999 and for females at Bogoslof Island in 1997.

Dr. Burkanov noted that comparative data for Steller sea lions in the Russian Far East for 1989 through 1999 indicates a large decline (70%) in abundance in Kamchatka, and a stabilization in the Kuril Islands and northern part of the Sea of Okhotsk. The overall abundance of the sea lion population in Russian waters has declined by 29% during this period.

Mr. Pavlov reported the results of tagging and censusing sea lions at five rookeries on the Kuril Islands. From 1996 through 1999, 1,630 newborn sea lions were branded. Data on size, pup mortality in the first months of life, and age composition were collected. Tag sightings are compiled year-round throughout the animal's range.

Dr. Loughlin reported results of Steller sea lion population status in Alaska by the U.S. and state of Alaska and reported on recent analysis of telemetry data for juvenile sea lions.

Dr. Zadalskiy presented data on the distribution of rookeries and abundance of sea lions in the northern part of the Sea of Okhotsk, from Okhotsk village to the Taiganos Peninsula. Rookeries are on Lisyanskiy Peninsula (breeding rookery), Zavyalova Island (haul-out site), Yamskie Islands (breeding rookery). The overall abundance of sea lions at all rookeries and haulout sites comprised 1,185 animals of which 242 were pups in 1998. He also presented information on the morphological characteristics and growth of Steller sea lions of the Kuril Islands.

CETACEANS

Dr. Melnikov presented information on current bowhead whale research off the Chukotka

Peninsula. Information was presented on the seasonal distribution and migration of beluga in the Sea of Okhotsk and Chukotka Peninsula. Literature on the seasonal distribution of beluga in the Bering Sea was thoroughly reviewed.

Dr. Burdin presented information on research of the Sea of Okhotsk bowhead whale population conducted in 1999. Compared with the period 1995-1996, the abundance of these whales in the area of Cape Ukurunru was lower, which is most likely associated with changes in prey distribution.

Dr. Burdin reported on research of the Okhotsk-Korean population of gray whales conducted in 1997-1999. In 1999 a slight redistribution of whales in the area of Piltun Lagoon was observed. A number of emaciated whales was seen perhaps associated with changes in prey availability.

Dr. Brownell presented findings from a workshop held in Seattle in March 1999 on the status of eastern gray whales. The workshop concluded that abundance monitoring should continue, particularly as carrying capacity is approached. Dr. Brownell noted that the population of eastern gray whales is now estimated to number more than 25,000.

Dr. Brownell also noted that the number of gray whales found dead along the western coast of North America was around 300, though some carcasses may have been counted more than once. Present plans are to investigate any large mortality event of gray whales that occurs in 2000. The U.S. plans to develop these plans in greater detail during conversations with colleagues from Russia, Mexico, and Canada.

Dr. Brownell also reviewed recent observations of right whales in the southeastern Bering Sea since 1997.

Dr. Loughlin summarized joint research between the North Slope Borough, Alaska, and Chukotka Native organizations and Russian government scientists.

Dr. Vladimirov reported preliminary results of a Sea of Okhotsk whale vessel survey conducted by Japan with the participation of Russian observers. A significant increase in the abundance of fin whales and the appearance of a small group of Japanese right whales north of Cape Terpeniya, Sakalin Island deserve special significance. A complete report on the expedition will be presented by Japan at the scientific committee meeting of the 52nd meeting of the IWC..

Dr. Vladimirov and Professor Zemskiy reported on Russian Far East (Amur-Sakhalin) beluga harvesting in 1999. Due to absence of current information on the status of beluga whale in the Sea of Okhotsk, the government of Russia adopted a resolution stopping the commercial harvest of beluga until new data on abundance are available, allowing only harvest for the needs of the Native population, scientific research, and public display.

Dr. Brownell reported on measures taken in the U.S. limiting Native harvest of beluga in Cook Inlet, Alaska, where overexploitation by Natives led to a reduction in the Cook Inlet population.

OTHER STUDIES

Mr. Nikulin presented a report on marine mammals caught in the salmon drift net fishery by Japanese vessels in the Russian exclusive economic zone. For the period 1992-1998, numbers of animals caught in the nets were provided: more than 13,000 Dall's porpoise; 850 harbor porpoise; more than 600 fur seals and nearly 1,000 ribbon seals. Serious concern over the ability to continue by-catch monitoring was raised, in light of the reorganization of marine resource protection in Russia.

Mr. Vertyankin reported the results of harbor seal capture and tagging work in Alaska; the effectiveness of the methodology in different areas, and desire to continue work on the capture method utilized at Pederson Glacier.

Dr. Kornev expressed the opinion that due to the recent economic difficulties in Russia, pressure on marine mammals has increased. Numerous incidents of sea otter and walrus poaching practically throughout their entire range in the Kamchatka-Kuril region attest to that. Local inhabitants, in an attempt to solve their financial problems, have turned to illegal harvesting, with the goal of selling sea otter pelts and walrus tusks. Moreover, scientific and law enforcement organizations, lacking funding, have great difficulties in conducting conservation and research efforts.

PROPOSED JOINT WORK

U.S. SIDE:

(The following proposals should be considered tentative, subject to the availability of funds.)

PINNIPEDS

WALRUS

The U.S. invites four Russian scientists to participate in a workshop to develop appropriate census techniques for estimating the population of walrus. A secondary goal of the workshop is to discuss trend indices that may be employed to track population trends.

The U.S. will provide equipment and training to Chukotka TINRO for age determination of walrus teeth.

The U.S. is interested in continued cooperation and will provide partial funding to support walrus haulout monitoring in Chukotka.

TRUE SEALS

The U.S. side invites 1 Russian scientist for 2-3 weeks to assist in harbor seal captures along the north side of the Alaska Peninsula and Bristol Bay. Research is planned for the first 3 weeks of August 2000.

EARED SEALS

The U.S. side invites 1 Russian scientist for 3 weeks to participate in the capture of Steller sea lions during winter 2000 with the NMML. Dates have not been set but the work is likely to occur during March.

The U.S. side invites 1-2 Russian scientists to participate in studies on Steller sea lions in the Aleutian Islands and Gulf of Alaska, regarding population status and distribution during June 2000-2001.

The U.S. side invites 1-2 Russians for 2-3 weeks to participate in sea lion tagging in the Gulf of Alaska during June-July 2000 in cooperation with the Alaska Sea Life Center.

The U.S. side invites 1 Russian specialist for 4 weeks to analyze northern fur seal time-depth recorder and other telemetry data at the NMML in late 2000 or 2001.

The U.S. side invites 1-2 Russian specialist for 2-4 weeks to conduct northern fur seal population monitoring and foraging ecology studies on the Pribilof Islands during the third quarter 2000.

CETACEANS

The U.S. invites 1 Russian scientists for 2-3 weeks to participate in cow/calf gray whale census work at Piedras Blancas, California during the spring of 2000 with personnel from the Southwest Fisheries Science Center.

RUSSIAN SIDE:

The Russian side will consider the conduct of the following studies in 2000-2001 subject to availability of funds and technical opportunities. The proposals will be clarified later by correspondence.

SEA OTTER

KamchatRybVod and the Commander Islands State Reserve invite one American specialist to take part in boat-based sea otter surveys on Kamchatka and the Commander and Kuril islands.

One to two American specialists are invited to participate in studies to tag sea otters in southeast Kamchatka and the Commander Islands for migration studies.

PINNIPEDS

WALRUS

KamchatRybVod invites 1-2 US specialists to take part in boat-based walrus surveys at their haulouts in northeast Kamchatka in July-August 2000.

TRUE SEALS

KamchatRybVod proposes to arrange joint work on radio tagging of larga and harbor seals in

southeastern Kamchatka (Utashud I.) and Commander Islands in April-June 2000 with participation of 1-2 U.S. specialists if such transmitters can be provided by the U.S. side.

The Commander Islands State Reserve plans to conduct research on population structure of harbor seals using biopsy sampling during their harvest in September-October 2000-2001. One U.S. specialist is invited to take part in this work.

EARED SEALS

KamchatRybVod invites 1-2 U.S. specialists to participate in the survey of adult Steller sea lions and branding of their pups at rookeries on the Kamchatka, Commander and Kuril Islands in late June-July 2000 or 2001.

One U.S. specialist is invited by KamchatRybVod to develop a GIS data base on Steller sea lion rookeries and haulouts of the Okhotsk and the western part of the Bering Sea, during October 2000 to March 2001.

Magadan State Reserve invites one U.S. specialist to participate in tagging of Steller sea lion pups on the Yamskie Islands for up to 2 weeks in June 2000.

KamchatNIRO will continue studies of foraging ecology and diving behavior of northern fur seals and Steller sea lions on the Commander Islands and invites 1-2 US scientists to join this investigation during summer 2000-2001.

CETACEANS

Kamchataka Institute of Ecology and TINRO Center plan to continue research of the Okhotsk-Korean population of gray whales off northeastern Sakhalin Island and invite 3-4 U.S. scientists to participate in field work in June-October 2000.

Kamchatka Institute of Ecology and the Pacific Oceanographic Institute will continue studies of the Okhotsk population of bowhead whales in the Shantar region and invite 3-4 U.S. scientists for joint field work in July-September 2000.

Pacific Oceanographic Institute invites 1-2 U.S. specialists to take part in research on population structure of beluga whales off Chukchi Peninsula using biopsy sampling during May to October 2000-2001.

JOINT PROPOSALS

Both sides agree to the need for coordinated sea otter surveys. The U.S. and Russian sides will cooperate in conducting joint aerial and ship surveys of the Aleutian and Commander Islands in spring-summer 2000. The purpose for the surveys is to document the extent of the dramatic decline of sea otters in the central Aleutian Islands.

The two sides agree to continue age determination studies and evaluation of fine structures in pinniped teeth, and of the foraging ecology, immunogenetics and disease of Baikal seals. Scientists from the Koltzov Institute of Developmental Biology and the Limnological Institute of Lake Baikal (Russian Academy of Sciences) and Hubbs-Sea World Research Institute (U.S.) will continue joint work with the exchange of scientists and materials.

The Working Group recommends that the subgroup created in 1997 on the conservation and management of whales traditionally harvested by Alaska and Chukotka natives redouble their efforts and present a summary of their research and subsistence activities at the next Working Group meeting.

TOPICS OF SPECIAL ATTENTION

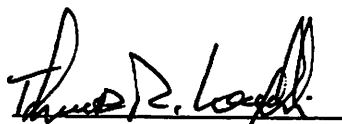
A dramatic decline (potentially 90%) of sea otters in the central Aleutian Islands, Alaska, raises significant concerns about the status of the population. To determine the extent of the decline, a broad survey is necessary that includes the Alaska Peninsula, Aleutian Islands, Commander Islands, Kamchatka Peninsula, and the Kuril Islands. Therefore, the participants recommend that a comprehensive and coordinated survey utilizing aircraft and ships be undertaken.

No recent population assessment is available for the Caspian seal and the population appears to be declining. Plans for major oil and gas development are underway in the Caspian Sea and this makes the need to better understand the status of these seals more immediate. Therefore, the participants recommend that the U.S.-Russia Joint Commission on Economic and Technological Cooperation ensures that population surveys be undertaken on these seals during the winter pupping season in 2000 using the best available technology, e.g. U.S. remote satellites.

The U.S. side thanked the Russian side for the warm hospitality shown the group and proposed that the next (16th) meeting of the Marine Mammal Working Group take place in the United States in the beginning of the second quarter of 2001.

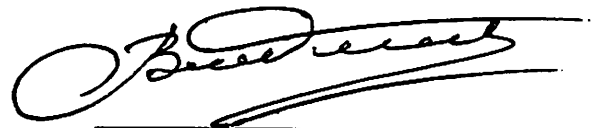
Signed at Petropavlovsk-Kamchatskiy, Russia, November 13, 1999 in the English and Russian languages, both texts being equally authentic.

For the American Side:



Thomas R. Loughlin
Project 02.05-61 Co-Leader

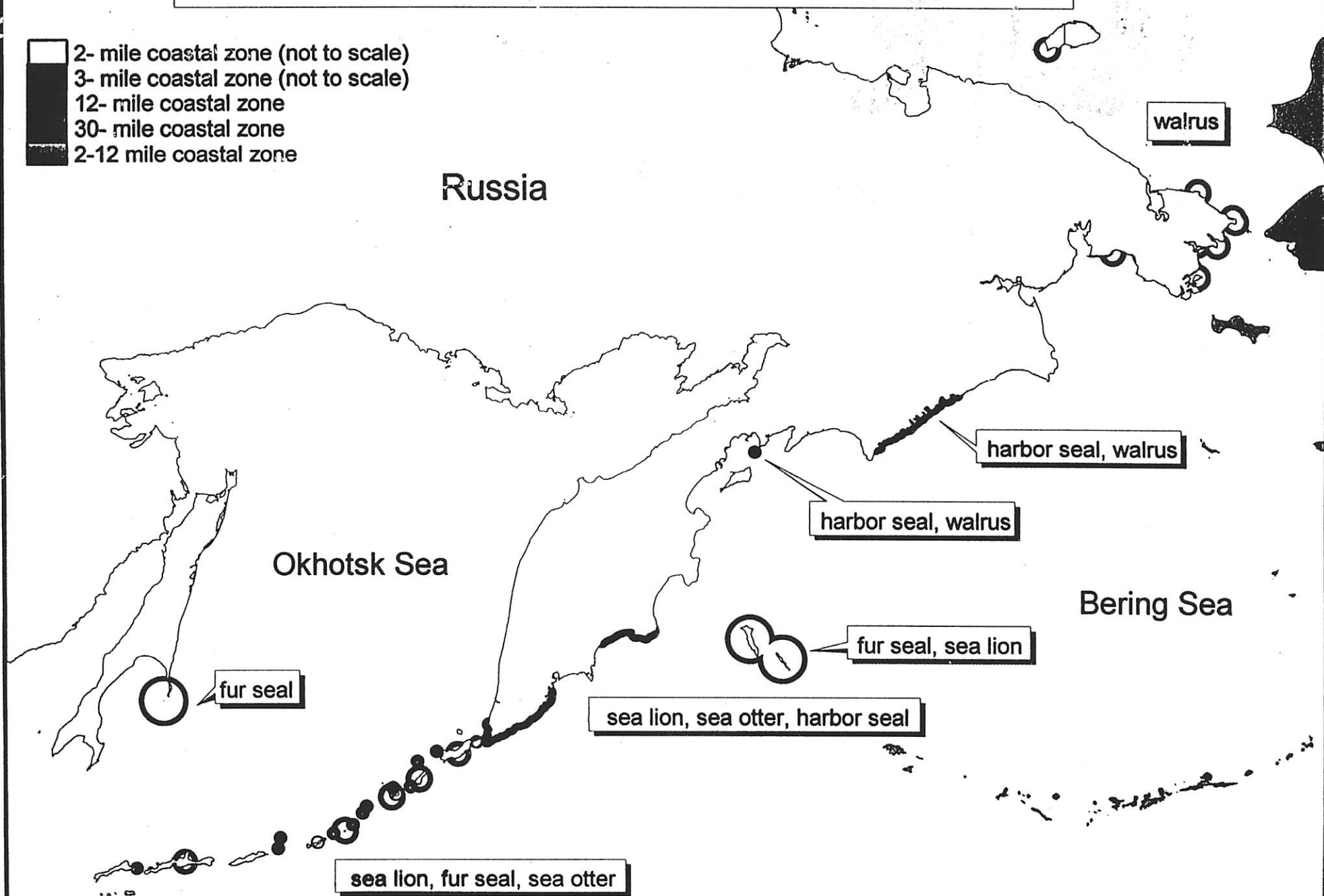
For the Russian Side:



Valeriy A. Vladimirov
Project 02.05-61 Co-Leader

Marine Mammal Protection Zones in Russian Waters

- 2- mile coastal zone (not to scale)
- 3- mile coastal zone (not to scale)
- 12- mile coastal zone
- 30- mile coastal zone
- 2-12 mile coastal zone



Agreement between the Government of the United States of America
and the Government of the Russian Federation
on Cooperation in the Field of Protection of the Environment and Natural Resources



Area V

Protection of Nature
and the Organization of Reserves

WORKING GROUP PROTOCOL

1999

"...the Parties shall work together to develop mutually agreed-upon policies in the field of protection of the environment and natural resources on a bilateral, regional and global basis."

The Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in the Field of Protection of the Environment and Natural Resources was signed by U.S. Vice President Al Gore and Russian Prime Minister Viktor Chernomyrdin on 23 June 1994 and supersedes the Agreement between the United States of America and the Government of the Union of Soviet Socialist Republics on Cooperation in the Field of Environmental Protection of 23 May 1972 signed by U.S. President Richard Nixon and Nikolai Podgorniy, Chairman of the Presidium of the Supreme Soviet of the U.S.S.R.

For additional information on wildlife conservation and research activities please contact:

United States of America

Mr. Steven G. Kohl
U.S. Fish and Wildlife Service
Office of International Affairs
4401 N. Fairfax Drive, Suite 730
Arlington, VA 22203

telephone: (703) 358-1761
fax: (703) 358-2207
e-mail: Steven_Kohl@fws.gov

Russian Federation

Mr. Aleksei I. Koldunov
Russian State Committee for Environmental Protection
International Cooperation Department
Ul. Bolshaya Gruzinskaya, 4/6
Moscow 123812

telephone: (095) 254-3655
fax: (095) 254-8283

1999 Working Group Protocol

Area V Protection of Nature and the Organization of Reserves of the U.S.-Russia Agreement on Cooperation in the Field of Protection of the Environment and Natural Resources

American and Russian Area V project leaders and participants met February 23-25, 1999 in Seattle to review exchanges carried out in 1998 and agree on activities for 1999. The following Work Plan was adopted (NOTE: Wherever possible, principal participating U.S. and Russian agencies/organizations are indicated for each item; see Key to Acronyms on last page):

Project 02.05-11, Conservation of Wild Species of Fauna

The work of this Project is carried out under five Activities:

Activity 02.05-1101, Implementation of the U.S.-Russia Convention Concerning the Conservation of Migratory Birds and Their Environment

This Activity coordinates implementation of the bilateral Convention between the United States and U.S.S.R. (Russia) Concerning the Conservation of Migratory Birds and Their Environment (1976), and promotes the protection and study of the more than 200 species listed in the Appendix to the Convention.

1. In the 2nd half of 1999 the two sides will hold a consultative meeting (location to be determined) for one week to review the list and nomenclature of bird species included in the Appendix to the Convention, discuss procedures for adopting changes to the Appendix, and begin compiling information to be used in the next Joint Statement, covering the Years 1993-1998. (MBM; VNIIPRIRODA)
2. Three Russian specialists will visit the National Bird Banding Laboratory (Maryland) in the 4th quarter of 1999 for 2-3 weeks to continue the transfer into a computer database of 250,000 band recovery records for Russia and the former Soviet Union (NBBL; IEE).

Activity 02.05-1102, The Study and Conservation of Cranes, Raptors and Other Rare Birds

This Activity seeks to establish and maintain stable reproducing populations of rare and endangered species of birds, both in the wild and in captivity.

I. Cranes:

1. One Russian specialist will visit the U.S. for ten days in March 1999 for consultations in Wisconsin with the International Crane Foundation and the Milwaukee Public Museum.

2. The two sides are preparing for implementation in 2000 a special conservation project aimed at assisting the recovery of the western population of the Siberian crane. The effort will include four stages:

- release of costume-reared Siberian cranes in the lower Ob River and Volga River delta;
- substitution of Siberian crane eggs into the nests of Eurasian cranes;
- deployment of long-life satellite transmitters on wild Siberian crane chicks to identify unknown summering areas for juveniles;
- deployment of satellite transmitters on adult Siberian cranes to identify alternate wintering areas in Iran.

II. Raptors:

1. One American specialist from the Milwaukee Public Museum will visit Russia for ten days in August 1999 to monitor the progress of a program to reintroduce peregrine falcons into the greater Moscow metropolitan area. (VNIPRIRODA)
2. Two American specialists will visit the southern tip (Cape Lopatka) of the Kamchatka Peninsula in September-October 1999 for three weeks to survey birds of prey migrating along the Pacific flyway. (RRTAC)

III. Other

Spruce Grouse: One Russian specialist will visit Kenai National Wildlife Refuge in Alaska for one month in late 1999 to monitor the effects of beetle-thinned and unthinned stands of white spruce on the diet and food quality of spruce grouse. This will be the basis for a comparative study of competitive relations between Asian spruce grouse and ruffed grouse in the Russian Far East. (R7)

Activity 02.05-1103, The Study and Conservation of Polar Bears

This Activity coordinates implementation of the U.S.-Russia Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, and promotes research on the biology and seasonal movements of polar bears.

1. One American specialist will visit Russia for two weeks in May 1999 to take part in a field survey in Chukotka to identify critical habitat used by polar bears for denning, feeding and seasonal movements. (MMM)
2. The United States and Russia will sign in the 2nd half of 1999 a bilateral Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population negotiated in February 1998. (R7; GOSKOMEKOLOGIA)
3. A workshop for polar specialists from both countries will be conducted in the 2nd half of 1999 in Alaska to develop a consensus on a preferred protocol for polar bear maternity den surveys, as well as evaluate techniques and discuss the logistics of aerial surveys on Wrangel Island planned for March-April 2000. (MMM; VNIPRIRODA)

(Activity 02.05-1104 has been redesignated as Project 02.05-51)

Activity 02.05-1105, Cooperation among Zoos in Captive Breeding of Rare and Endangered Animals

This Activity fosters cooperation among zoos of both countries to preserve genetic diversity of rare and endangered animals raised and maintained in captivity.

1. In 1999 the two sides will continue to exchange and disseminate information on research conducted in zoos of both countries. Animal transfers will be carried out in strict compliance with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The species to be studied or exchanged and participating zoos are:

WALRUS: Brookfield Zoo (Chicago) and Moscow Zoo

PALLAS CAT: Brookfield Zoo, San Diego Zoo and Moscow Zoo

SNAKES: Brookfield Zoo and Moscow Zoo

GALAPAGOS TORTOISE: Brookfield Zoo and Moscow Zoo

RED WOLF: San Diego Zoo and Moscow Zoo

EUROPEAN LYNX: San Diego Zoo and Moscow Zoo

GIBBON: International Center for Gibbon Studies (California) and Moscow Zoo

2. One representative of the Moscow Zoo will visit the U.S. (Florida) for one week in March 1999 for a consultative meeting on Felidae sponsored by the American Zoo and Aquarium Association (AZA).

3. The Moscow Zoo will cooperate with the following U.S. zoos in information and design technology:

BALTIMORE AQUARIUM: design and construction of aquarium

CINCINNATI ZOO: design and construction of insectarium

MINNESOTA ZOO: ISIS/ARKS for Windows computer program

Activity 02.05-1106, Conservation and Management of Marine Birds

This Activity is the means by which the U.S.-Russia Marine Bird Working Group coordinates joint seabird and shorebird studies.

1. Two Russian specialists will visit Alaska during April-July 1999 for three months to continue long-term comparative field studies at Lake Clark National Park on the distribution, behavior and genetic characteristics of surfbirds and great knots. Work will also continue on producing a bilingual bibliography and database of published and unpublished literature about shorebirds of the North Pacific. (ASC; MUS)

2. One Russian specialist will visit the U.S for up to two months in the 2nd quarter of 1999 for joint field studies on molt, breeding biology and weight dynamics of five species of auklets on Buldir Island, Alaska. (MBM-7; IEE)

3. One Russian specialist will visit Alaska for three months (June-August 1999) for long-term monitoring of ledge-nesting birds, including common and thick-billed murre, black-legged kittiwakes and auklets, on Little Diomed Island, Alaska (MBM-7; IEE).
4. 2-3 American specialists will visit Russia in the 3rd quarter of 1999 to take part in a survey of coastal birds in estuaries and nearshore marine waters of Sakhalin Island. Data obtained will permit specialists to better evaluate the potential effect on these birds of gas and oil development activities on Sakhalin. (MBM-7)
5. Throughout the year American and Russian specialists will continue work on development of a database and atlas of Beringian shorebird distribution. Visits of specialists will be arranged as necessary. (MBM-7)

Project 02.05-21, Aleutian Chain Biodiversity

This Project studies the natural features and fauna/flora species common to the national wildlife refuges of Southeastern Alaska, the Alaska Peninsula and the Aleutian Islands (U.S.), and the nature reserves of Northeastern Russia, the Kamchatka Peninsula and the Commander Islands (Russia). Many of the exchanges conducted under Activities 02.05-1101, -1102, -1106 and -7102 also promote the goals of Project 02.05-21.

1. In 1999 the two sides will continue work on a cooperative "Chronicle of Nature" describing all the natural processes occurring at certain periods of time in Izembek National Wildlife Refuge (U.S.) and Kronotskiy Reserve (Russia). The draft text, tables, figures and appendices have been completed and will be finalized before year's end. (R7; GOSKOMEKOLOGIA)
2. The Russian side will invite American specialists to take part in the development of management plans for Kronotskiy and Commander Islands Nature Reserves (Kamchatka). The possibility of pairing these reserves with sister U.S. refuges in the Aleutian Islands will also be discussed. (REF; GOSKOMEKOLOGIA)

Project 02.05-31, Cooperation in Wildlife Trade and Law Enforcement

This project assists enforcement officials in the U.S. and Russia to address the problems of international wildlife commerce, with particular attention to the Convention on International Trade in Endangered Species of Fauna and Flora, or CITES.

1. Two American forensic specialists will visit Russia in April 1999 for ten days for consultations with the Russian Interagency Ichthyological Commission in Moscow and Astrakhan on identification of different types of caviar in connection with the April 1998 listing of all sturgeon species as threatened or endangered under the CITES Convention. (LE; GLAVRYBVOD)

2. Two Russian specialists will travel to the U.S. for ten days in August 1999 to visit the National Fish and Wildlife Forensic Laboratory (Oregon) and attend a meeting of the International Association of Forensic Scientists in Los Angeles. (LE)
3. The two sides will consult on the design and installation of airport exhibits in gateway cities of Alaska and the Russian Far East to familiarize the traveling public with international wildlife conservation and trade laws. (R7)

Project 02.05-41, Ecosystem Biodiversity

The work of this Project is carried out under three Activities:

Activity 02.05-4101, Biosphere Reserves

This Activity provides for monitoring of the natural processes in paired biosphere reserves of both countries, and facilitates exchange and sharing of data through the Man and the Biosphere information MABFlora, MABFauna, ACCESS and Biomass systems.

1. One American specialist will visit Russia for one week in April 1999 to conduct a training workshop in Moscow in the use of MABFlora/MABFauna standardized biological inventory and monitoring software. Each workshop participant will receive a Pentium II-class computer for use in his/her respective biosphere reserve east of the Ural Mountains. (BRD; IEE)
2. One American and one Russian specialist will each spend up to three months in the other country in the 2nd half of 1999 to further develop MABFauna databases, with special emphasis on global distribution of amphibians and exotic vertebrate species. (BRD; IEE)
3. One Russian specialist will spend up to two months in the U.S. in the 2nd half of 1999 working to expand MABFlora databases to include non-indigenous vascular plants of Russia. (BRD; IEE)

Activity 02.05-4102, Arid Ecosystems

This Activity promotes the study and conservation of critical arid land areas, and develops methods for combating the processes of desertification and loss of water resources.

1. The following topics are under consideration for cooperation in 1999 and beyond: identifying the ecological impact of the rising level of the Caspian Sea on arid ecosystems of Kalmykia, and conducting research on the status of the saiga antelope in Kalmykia. Cherniye Zemli Biosphere Reserve will play a leading role in these exchanges, for which plans will be agreed upon through correspondence. (IEE)
2. The two sides will discuss a possible comparative joint study of ecosystems in both countries where the genera *Populus*, *Salix* and *Tamarix* co-occur as natives, in order to better understand the long-term dynamics of *Tamarix ramosissima* in the U.S. (BRD; IEE)

Activity 02.05-4103, Mountain Ecosystems

This Activity promotes the study and conservation of mountain territories and the unique biodiversity of mountain ecosystems.

The two sides are considering initiating a series of information and personnel exchanges on the comparative ecology of the Appalachian (U.S.) and Ural (Russia) Mountains, including disturbances to ecosystems as a result of economic development activity. (BRD; IEE)

Project 02.05-51, Protected Natural Areas

The work of this Project is carried out under two Activities:

Activity 02.05-5101, Protected Areas Management

This Activity provides for the comparative study of refuges and nature reserves, including internal processes and external factors affecting them, with emphasis on protection of rare and endangered species of fauna and flora.

1. The 3rd Call for Proposals under the U.S. Fish and Wildlife Service program of small grants to Russian reserves and parks will be conducted January 1-March 15, 1999. Review panels in Russia and the U.S. will evaluate all applications, and winners will be announced by June 30. Awards will be a maximum of \$5,000 each. (FWS; GOSKOMEKOLOGIA)
2. Five Russian specialists from reserves in eastern Siberia will visit the U.S. in the 3rd quarter of 1999 for two weeks for familiarization with land use planning, public use, fire management, exotic species and water quality issues in analogous national wildlife refuges. (REF; MINPRIRODY)
3. To gain a better understanding of day-to-day operations in refuges and reserves in both countries, the two sides inaugurated in 1998 a program of long-term (3-4 weeks) exchanges of specialists from protected areas of the U.S. and Russia. The program will continue in 1999, with the participation of up to two Americans and two Russians. (REF; GOSKOMEKOLOGIA)
4. A training workshop focusing on local constituencies, protected area management, education and outreach activities, visitor facilities and management of bear populations will be held in the U.S. (Alaska) in October 1999 with the participation of approximately 12 staff members from nature reserves and national parks in the Russian Far East.

Activity 02.05-5102, Conservation Education

This Activity enhances public awareness of and commitment to the need to conserve wild species of fauna and flora and their habitats while encouraging sustainable natural resource development practices.

1. 1-2 American specialists will visit Russia for two weeks in August 1999 to conduct an evaluation of educational and public outreach activities at Katunskiy Reserve in Gorno-Altai and Vodlozerskiy National Park in Karelia. (REF, R1; MINPRIRODA, LESKHOZ)

2. A major photo exhibit on protected natural areas of Russia, organized by the "Zapovedniks" Environmental Education Center in Moscow, will tour in the U.S. during the period January-September 1999 and be displayed in Olympia, WA; Portland, OR; Blackwater National Wildlife Refuge, MD; Yellowstone National Park, WY; and the Interior Department in Washington, DC.

Project 02.05-61, Marine Mammals

This Project carries out cooperative research on the biology, ecology and population dynamics of marine mammal species shared by both countries, leading to the development of methods for the management and protection of these animals.

The 15th meeting of the U.S.-Russia Marine Mammal Working Group will be held in Russia in September 1999 with the participation of eight American specialists.

Northern Fur Seals

One Russian specialist will visit the National Marine Mammal Laboratory in Seattle for three weeks in March-April 1999 to analyze and write up the results of data obtained from fur seal population and ecological studies conducted in the U.S. and Russia. (NMML; Kamchatka TINRO)

Harbor Seals

One Russian specialist will visit the U.S. in the 3rd quarter of 1999 or 2000 to participate in Alaskan harbor seal research and continue studies on calculating aerial survey correction factors. (NMML; KAMCHATRYBVOD; Kamchatka TINRO)

Ice Seals

One Russian specialist will visit the U.S. (Fairbanks and Seward, Alaska) for 3-4 weeks in the 2nd half of 1999 to analyze American and Russian ice seal data and prepare a draft manuscript of the results for future publication. (ADF&G; KAMCHATRYBVOD; Magadan TINRO)

Lake Baikal Seals

2-3 American specialists will visit Russia in the 2nd half of 1999 for joint work with Russian specialists on health, disease and pathology of Lake Baikal seals, including immunogenetics and comparative disease resistance. (HSRI; Lake Baikal Limnological Institute)

Steller Sea Lions

1. One American specialist will visit Russia in 1999-2000 for 2-3 weeks to assist in aerial surveys and tagging of sea lions on rookeries in the Far East. (NMML; Kamchatka TINRO)
2. 1-2 Russian specialists will visit the U.S. for two weeks in November 1999 or three weeks in March 2000 to take part in studies to develop underwater capture techniques of free-ranging juvenile Steller sea lions and to tag/brand sea lions in SE Alaska, Gulf of Alaska and Aleutian Islands (NMML; ADF&G; Alaska Sealife Center; Kamchatka TINRO)

Walrus

1. Three Russian specialists will visit the U.S. (Alaska) for ten days in May 1999 for training and field experience in walrus harvest monitoring. One specialist will remain for an additional ten days to assist in further harvest monitoring on the NW Alaska coast. (MMM; ADF&G; Chukotka TINRO)
2. One Russian specialist will visit the U.S. for three weeks in July 1999 to take part in a shipboard ice-edge survey of walrus herd size and composition in the Chukchi Sea. (UAF; Chukotka TINRO; MMM)
3. In the 3rd quarter of 1999 the Russian side will conduct a U.S.-funded study of the size and composition of walrus herds at Rudder and Meechkin (Chukotka) haulouts. (MMM; VNIRO)

Sea Otters

1. One Russian specialist will visit the U.S. for one week in March 1999 to work with U.S. colleagues in Alaska on preparation of a draft manuscript on the relationship of genetic diversity to fluctuating asymmetry in sea otters. (ASC; KIE)
2. The two sides will evaluate the results of necropsies performed at the U.S. National Wildlife Health Center on several sea otters from the Commander Islands, Russia. (NWHC; KAMCHATRYBVOD)

Whales

1. In the summer of 1999 Russian and American specialists will continue work begun in 1998 on monitoring and studying the Okhotsk-Korean population of gray whales in connection with oil and gas exploration and development activities off the northern coast of Sakhalin Island, Russia. (SWFC; KIE)
2. The two sides will continue cooperation in the second year of a five-year project to track and document the movements of bowhead whales off Chukotka and determine the extent to which they enter Alaskan waters. (SWFC, NSB/DWM; RAS/FEB; VNIRO)

Project 02.05-71, Animal and Plant Ecology

The work of this Project is carried out under six Activities:

Activity 02.05-7101, Conservation of Rare and Endangered Species of Plants and Comparative Studies of North American and Eurasian Flora

This Activity promotes cooperation among botanical gardens and arboreta in both countries, including exchanges of seeds and other plant materials endemic to each country for propagation and growing, and organization of joint botanical research and collecting expeditions.

In 1999, the two sides will consider exchanging delegations of up to three members each for familiarization with work on selection of the best plant species for projects to introduce more greenery into urban areas, and to work on computer databases for collections in botanical gardens and arboreta of both countries. (U.S. National Arboretum; Moscow Botanical garden)

Activity 02.05-7102, Northern Migratory Waterfowl

This Activity determines the nesting areas, migratory routes, wintering grounds, productivity and adaptation to environmental changes of geese, ducks and other waterfowl species, with particular emphasis on areas subject to human disturbance.

1. Under a bilateral Cooperative Agreement the Russian side will continue to monitor the status of and deploy metal leg bands on approximately 1,000 Wrangel Island snow geese. To prepare for this work, one Russian specialist will visit the U.S. for two weeks in April 1999 for consultations in Oregon and California on species reproductive success and harvest mortality.(R1)
2. The two sides will develop a plan to complete a joint report on the results of four aerial surveys of waterfowl conducted by Russian and American biologists in Chukotka between 1992 and 1995. (MBM-7; IEE)
3. Three Russian specialists will visit the National Bird Banding Laboratory (Maryland) in the 4th quarter of 1999 for 2-3 weeks to update Russia's computer database for banded waterfowl and songbirds and study computer applications of population models (see 02.05-1101). (NBBL; IEE)

Activity 02.05-7103, Holarctic Mammals

This Activity studies the systematics and zoogeography of mammals of the holarctic, examines problems of gene pool conservation in those species, and evaluates genetic variability in populations.

One Russian specialist will visit the Smithsonian Institution in Washington, D.C. in the 2nd half of 1999 to complete work on standardization of American and Russian computer habitat mapping techniques and prepare portions of the joint Atlas of Holarctic Mammals for publication on laser discs. (NMNH; IEE)

Activity 02.05-7104, Chemical Senses and Communication in Animals

This Activity investigates the functions and mechanisms of taste and smell. Areas of research include general ecology, physiology, immunology, endocrinology, biochemistry, carbohydrate chemistry, nutrition, behavior and genetics.

One Russian scientist will visit the U.S. for three months during February-May 1999 to continue joint behavioral and neuroanatomical studies of animal sensitivity to environmental chemicals at Monell Chemical Senses Center in Philadelphia. (Monell; IEE)

Activity 02.05-7105, Application of Contemporary Technology in Ecological Studies of Large Mammals

This Activity develops joint methods for the collection and processing of remotely-sensed data in radar deposition, integrated processing of satellite data from telemetry and multi-deposition environmental remote sensing, and creation of data base structures and models for ecological studies of large mammals in arctic environments.

Two Russian specialists will visit the U.S. (Alaska) for two months in September-October 1999 to assess sea ice habitat parameters and their effect on movements and behavior of polar bears and walrus in a changing global climate. (ASC; IEE)

Activity 02.05-7106, Wildlife Health and Disease

Wildlife in the U.S. and Russia share many common diseases of microbial, parasitic, and chemical origin. Migrations and translocations of certain species create conditions for the transfer of diseases between the two countries. This Activity provides for cooperation in wildlife health research and disease prevention.

Six American specialists will visit Moscow for one week in November 1999 to take part in a seminar/training workshop for Russian veterinarians on exotic diseases of wildlife. Topics to be covered will include: rabies, distemper, anthrax, brucellosis, botulism, avian cholera, lead poisoning, and development of medicines and vaccines. (NWHC; VNIIPRIRODA)

Project 02.05-81, Ichthyology and Aquaculture

This Project's goals are to improve fisheries management, increase productivity through intensive fish culture, restore fishery resources, and study and exchange information on the physiology, nutrition, diseases, genetics, and reproductive biotechnology of fish species of mutual interest.

1. Four Russian specialists from Sakhalinrybvod will visit the U.S. for two weeks in May 1999 for familiarization with laboratory and field research on green sturgeon in the Pacific Northwest, and for observation of fisheries law enforcement activities in Oregon. (ODFW)

2. Fifteen Russian specialists will visit the U.S. to attend the 7th International Symposium on the Biology and Management of Coregonid Fishes, to be held August 9-12, 1999 in Ann Arbor, Michigan. (GLSC)
3. Fifteen American specialists will visit the Russian Far East for one week in October 1999 to take part in a bilateral Workshop on Interaction of Wild and Hatchery-Produced Salmon. (FWS, ODFW, WDFW, Wild Salmon Center; GLAVRYBVOD, KAMCHATRYBVOD, SAKHALINRYBVOD, OKHOTSKRYBVOD, TINRO, Kamchatka TINRO, Magadan TINRO)
4. Under an ongoing project to study and conserve steelhead salmon and other native fish species and their habitats on the Kamchatka Peninsula, scientists and volunteers from the Wild Salmon Center (Washington, Oregon) and Moscow State University will continue expeditionary field work on Kamchatka during the summer and fall of 1999 to collect and analyze samples and data.

Project 02.05-91, Ecology and Dynamics of Arctic Marine Ecosystems

This Project, abbreviated "BERPAC," studies the status and dynamics of Arctic marine ecosystems, including their assimilative capacity, biological indicators of ocean pollution, and effects of human-caused disturbances, in order to establish scientific bases for predicting major ecological, geochemical and geophysical processes in the Bering and Chukchi Seas.

1. Five Russian specialists will visit the U.S. for one week in February 1999 to (1) complete the manuscript editing and finalize for publication the text of a joint monograph presenting the scientific results of the September 1993 BERPAC expedition, and (2) begin planning the next BERPAC expedition, to be conducted in the 3rd quarter of 2000. (BRD; RAS)
2. Three American specialists will visit Russia for ten days in July 1999 for consultations with the Russian side on scientific objectives, funding and logistical arrangements for the summer 2000 BERPAC expedition. (BRD; RAS)

List of Acronyms and Abbreviations

ADF&G	Alaska Department of Fish and Game
ASC	BRD Alaska Biological Science Center, Anchorage
BRD	Biological Resources Division of U.S. Geological Survey
Chukotka TINRO	Chukotka Federal Fisheries Research Institute, Anadyr
FWS	U.S. Fish and Wildlife Service
GLAVRYBYOD	Main Fisheries Directorate, Moscow
GLSC	BRD Great Lakes Science Center, Ann Arbor
GOSKOMEKOLOGIA	Russian State Committee for Environmental Protection
HSRI	Hubbs Sea World Research Institute, La Jolla
IBPN	Institute of the Biological Problems of the North, Magadan
IEE	Institute of Ecology and Evolution, RAS, Moscow
KAMCHATRYBVOD	Kamchatka Fisheries Agency
Kamchatka TINRO	Kamchatka Federal Fisheries Research Institute
KIE	Kamchatka Institute of Ecology, Russian Academy of Sciences
LE	FWS Division of Law Enforcement
LESKHOZ	Russian Federal Forestry Service
Magadan TINRO	Okhotsk Federal Fisheries Research Institute, Magadan
MBM	FWS Migratory Bird Management
MBM-7	Region 7 FWS Migratory Bird Management, Anchorage
Monell	Monell Chemical Senses Center, Philadelphia
MMM	Region 7 FWS Marine Mammals Management, Anchorage
MUS	Museum of Natural History of Moscow State University
NBBL	National Bird Banding Laboratory, USGS/BRD, Laurel, MD
NMFS	U.S. National Marine Fisheries Service
NMML	NMFS National Marine Mammal Laboratory, Seattle
NMNH	Smithsonian National Museum of Natural History, Wash., DC
NSB/DWM	North Slope Borough Dep't. Of Wildlife Management, Alaska
NWHC	BRD National Wildlife Health Center, Madison, WI
ODFW	Oregon Department of Fish and Wildlife
OKHOTSKRYBVOD	Okhotsk Sea Fisheries Agency, Magadan
OMA	FWS Office of Management Authority
OSA	FWS Office of Scientific Authority
R1	FWS Region 1 (CA, ID, WA, OR, NV, HI)
R7	FWS Region 7 (AK)
RAS	Russian Academy of Sciences
RAS/FEB	Far East Branch of Russian Academy of Sciences
REF	FWS Division of Refuges
RRTAC	BRD Raptor Research and Technical Assistance Center, Idaho
SAKHALINRYBVOD	Sakhalin Fisheries Agency
SWFC	NMFS Southwest Fisheries Center, La Jolla
TINRO	Russian Pacific Federal Fisheries Research Institute, Vladivostok
UAF	University of Alaska-Fairbanks
USFS	U.S. Forest Service
VNIIPRIRODA	Russian Federal Wildlife Research Institute, Moscow
VNIRO	Russian Federal Fisheries Research Institute, Moscow
WDFW	Washington Department of Fish and Wildlife