

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[Docket No. 020718172-2303-02; I.D. 051402C]

RIN 0648-AQ08

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. The intended effect of this final rule is to protect the endangered western DPS of Steller sea lions, as required under the Endangered Species Act (ESA), and to conserve and manage the groundfish resources in the Bering Sea/Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 1, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island; the supplemental environmental impact statement on Steller Sea Lion protection measures in the Federal groundfish fisheries off Alaska (SEIS), including the 2001 biological opinion (2001 BiOp) and regulatory impact review; the November 30, 2000, biological opinion (FMP BiOp); the final regulatory flexibility analysis; and the 2002 Stock Assessment and Fisheries Evaluation report for the BSAI Groundfish Fisheries may be obtained from the National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK

99802-1668. The SEIS is also available on the NMFS Alaska Region home page at <http://www.fakr.noaa.gov>. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT:

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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 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. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the ESA of 1973, 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Background

On November 30, 2000, NMFS issued a biological opinion on the FMPs, which determined that the pollock, Pacific cod, and Atka mackerel fisheries were likely to jeopardize the continued existence of the western DPS of Steller sea lions and to adversely modify its critical habitat. It contained a reasonable and prudent alternative (RPA) that included large fishery closure areas, harvest limits, and seasonal distribution of harvest for the pollock, Pacific cod, and Atka mackerel fisheries. Before the RPA could be implemented, the President signed Public Law 106-554 on December 21, 2000, which contained a 1-year timetable to phase in the RPA. This year provided the Council with time to develop alternative protection measures that would avoid jeopardy and adverse modification of critical habitat for Steller sea lions.

The Council appointed an RPA Committee consisting of a variety of members including commercial fishery interests, the environmental community, the Alaska Department of Fish and Game (ADF&G), and NMFS. The RPA Committee, which met

numerous times throughout 2001 to evaluate the best scientific and commercial data available developed, with the assistance of NMFS expertise, recommendations for Steller sea lion protection measures for the pollock, Pacific cod, and Atka mackerel fisheries. More details on the protection measures development process and the status of Steller sea lions are contained in the preamble to the proposed rule published September 4, 2002 (67 FR 56692).

In a section 7 consultation under the ESA, NMFS issued a 2001 BiOp, which determined that the groundfish fisheries managed under the protection measures in this final rule are unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its critical habitat. Following this determination, the Council adopted and forwarded to NMFS the protection measures contained in this final rule, which are necessary to comply with section 7(a)(2) of the ESA. These measures were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002; amended 67 FR 21600, May 1, 2002; corrected 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and 67 FR 64315, October 18, 2002; and extended 67 FR 34860, May 16, 2002).

A detailed history on past biological opinions and court cases regarding Steller sea lions and the Alaska groundfish fisheries and a description of how the protection measures meet the national standards in the Magnuson-Stevens Act are presented in the preamble to the January 8, 2002, emergency interim rule (67 FR 956).

Summary of the 2002 Protection Measures

For more detailed descriptions by topic, fishery, and area, see the preamble to the proposed rule (67 FR 56692, September 4, 2002). Closure areas apply to vessels named on a Federal Fisheries Permit issued under § 679.4(b) in the groundfish fisheries in the BSAI and GOA reporting areas, including the State waters within those reporting areas. The following is a summary of protection measures:

1. Area closures for all groundfish fishing within 0-3 nm of 39 rookery sites. These sites are considered the most sensitive for females with pups, and the nearshore marine critical habitat is the most important to protect from interactions between groundfish fisheries and Steller sea lions.

2. Protection measures for the Atka mackerel, pollock, and Pacific cod directed fisheries in the waters off Alaska, which include the following: (a)