

cod fisheries will be the first seasonal allowance of Pacific cod proposed in the annual notice of proposed harvest specifications. A similar omission relating to the CDQ Atka mackerel and CDQ Pacific cod fisheries is corrected at § 679.20(c)(2)(ii)(B) in the final rule. These changes are necessary to achieve temporal dispersion of the pollock, Atka mackerel, and Pacific cod fisheries, as described in the notice of proposed rulemaking implementing the Steller sea lion protection measures.

In § 679.20(d)(4), the term “biomass” is changed to “spawning biomass” to clarify the type of biomass that is considered in the harvest control rule.

Text in § 679.22 is changed to clarify application of closure areas. The term “federally permitted vessels” is replaced with “by vessels named on a Federal Fisheries Permit issued under § 679.4(b)”. NMFS may issue a number of different permits to owners of vessels for fishing activities in the BSAI and GOA. The permits are issued to an owner, and a vessel is named on the permit. This change will identify the vessels, and the type of permitting that is affected by the Steller sea lion protection measures, thereby reducing confusion.

Footnote 4 to Table 5 is changed in the final rule from the proposed rule to clarify the location of waters closed to pot and hook-and-line directed fishing for Pacific cod. Closures for these gear types are applicable to critical habitat in waters east of 173° W long. Amlia I./East and Tanadak I. (Amlia) haulouts are located at nearly 173° W long., and Footnote 4 to Table 5 in the final rule is corrected to indicate that the 20-nautical mile (nm) closures for these haulouts applies only to waters east of 173° W long., as described in the preamble to the proposed rule.

The regulatory text in the emergency interim rule implementing 2002 Steller sea lion protection measures did not include applicability date language for Tables 21, 22, 23, and 24. Without applicability date language, the tables appeared to be a permanent regulatory amendment, which cannot be accomplished by emergency interim rule. This final rule replaces these tables with Tables 4, 5, 6, and 12. Tables 21, 22, 23, and 24 are removed to prevent confusion.

Response to Comments

NMFS received 2 letters with comments in response to the May 16, 2002, extension of the emergency interim rule (67 FR 34860) that implemented the Steller sea lion protection measures and the 2002 harvest specifications.

One letter supported the extension of the emergency interim rule to protect Steller sea lions. The writer agreed with the temporary constraint on the fisheries and was concerned about overexploitation of marine resources.

The second letter was a copy of the comments submitted by the writer regarding the January 8, 2002, emergency interim rule. Responses to these comments were provided in the preamble to the proposed rule (67 FR 56692, September 4, 2002) and no further response is needed.

One letter of comment was received before the proposed rule was published concerning the VMS requirements that this rule will implement. The letter made three points. First, VMS should only be required on vessels that had previous fishing violations. Second, VMS should not be required when vessels are engaged in fishing operations other than directed fishing for Pacific cod, Atka mackerel or pollock or when the vessel is being used for personal uses such as hunting. Third, VMS should not be required when a fishery is only open in another area. For example, if a fishery is only open in the BSAI, the vessel should not be required to use a VMS if it only fishes in the GOA.

NMFS disagrees with all three suggestions to relax VMS requirements. VMS is a tool to determine in near real time whether a violation may be occurring. If only those vessels with previous fishing violations were required to participate in a VMS program, NMFS would be unable to determine whether violations by vessels without previous violations were occurring. Using other traditional methods of enforcement, significantly less of the illegal incursions are likely to be discovered. While under most circumstances it is possible to determine from a vessel's VMS transmissions whether the vessel is fishing, it is not possible to determine what the vessel is harvesting. Enforcement would be most effective if all fishing vessels were required to operate a VMS at all times. However, in order to reduce impact on those vessels that do not engage in the Pacific cod, Atka mackerel, or pollock fisheries with pot, hook-and-line, or trawl gear, operating a VMS will only be required for those vessels that do participate in these fisheries, and only when these fisheries are open. Vessel owners intending to use their boats for purposes other than directed fishing for Pacific cod, Atka mackerel, or pollock may have NMFS remove the endorsement for those species from their FFP. Concerning the third point, the

boundary between the Gulf of Alaska and the Bering Sea is long and many of the critical habitat areas straddle that boundary. If VMS were not required in both areas when a fishery is open in either area, enforcement would be unnecessarily complicated. Vessels that had turned their VMS transmitters off would be able to “hide” in the area where VMS was not required and enter the area where VMS was required making effective surveillance difficult or impossible.

NMFS received three letters with comments regarding the proposed rule for Steller sea lion protection measures. Two letters recommended that NMFS approve software-based VMS technologies that integrate electronics already on the vessel, at least as backup systems. NMFS believes that the modification of VMS standards is outside the scope of this rulemaking. First, NMFS did not propose this measure for public comment. Second, VMS standards are promulgated and amended on a national level and VMS components are approved for use off Alaska based on those standards. At this time, the software-based systems referred to in the comment do not meet the current standards. The comments from the third letter and responses are summarized below.

Comment 1. In general, the commentor disagreed that the groundfish fisheries are likely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely affect its critical habitat. Little, if any, scientific evidence exists of competition between groundfish fisheries and Steller sea lions. NMFS is acting in a highly conservative and precautionary manner by imposing Steller sea lion protection measures contained in the proposed rule.

Response. The ESA requires NMFS to ensure the protection of endangered and threatened species. Sufficient evidence exists of the potential for competition for prey between the groundfish fisheries and Steller sea lions to warrant restrictions on the groundfish fisheries. The protection measures in the final rule ensure that the groundfish fisheries will be unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or destroy or adversely modify its critical habitat.

Comment 2. The zonal approach of restricted fishing areas should not be changed until an evaluation is done. The year 2002 should be used as a baseline.

Response. The effectiveness of the protection measures will be evaluated before any changes are made.