

Comment 3. The 2002 pup and non-pup Steller sea lion aerial survey results do not support the concept of groundfish fishery interaction leading to Steller sea lion declines. The locations of increases and decreases in counts are not consistent with areas of more or less amounts of fishing. This again demonstrates that NMFS is acting in a highly conservative and precautionary manner.

Response. NMFS is unable to draw conclusions about the effectiveness of Steller sea lion protection measures using the recent Steller sea lion survey estimate. NMFS has a number of research programs under way that are intended to provide further information about possible groundfish fishery interactions with Steller sea lions. The recently measured increase in the population may indicate the effects of protection measures implemented since 1999, natural environmental changes, or merely a statistical anomaly. In the 2002 FMP BiOp (see **ADDRESSES**), NMFS determined that we would need 6–10 years (roughly 3–5 surveys) to positively determine a change in the population trajectory given uncertainty in the estimates. NMFS will continue to evaluate this information as it becomes available and will use it to determine the relationship between Steller sea lion population trends and fisheries.

Comment 4. Table 5 should be corrected for five haulouts located just east of 173° West long. The closure areas for these sites only apply to those waters located east of 173° West long. and a footnote should be added to the table to indicate this.

Response. Two of the five haulouts should be corrected. Accordingly, Table 5 is changed from the proposed rule for Amlia I./East and Tanadak I. (Amlia). Footnote 4 to the Table has a sentence added indicating that the 20-nm closure for these haulouts for the hook-and-line and pot Pacific cod fisheries applies only to those waters located east of 173° West long. Other Steller sea lion sites near the 173° West long. are either rookeries with 10 or 20 nm closures or haulouts with 20 nm closures that are overlapped by the Segua foraging area closure.

Comment 5. The word “spawning” should be inserted immediately before the term “biomass” whenever that term occurs in the regulatory text at § 679.20(d)(4) for the harvest control rule to be consistent with the preamble.

Response. The change is made in the final rule.

On October 5, 2002, the Council provided comment on the proposed rule by recommending the continued closure of the Aleutian Islands subarea to

directed fishing for pollock in 2003 and the opening of this subarea in 2004 and beyond to directed fishing for pollock outside the critical habitat, apportioned seasonally (40:60 percent). The Council requested this change to allow for additional analysis of the potential effects of opening the pollock fishery. The Council recommended that NMFS analyze effects of the Aleutian Islands subarea directed pollock fishery on Steller sea lions, bycatch, and other fisheries, including cumulative effects.

The 2001 BiOp found that opening the seasonally apportioned pollock fishery outside of critical habitat in the Aleutian Islands subarea would not likely cause jeopardy or adverse modification of critical habitat for the western DPS of Steller sea lions. At this time, NMFS has no new information that would change the conclusion in the 2001 BiOp concerning the Aleutian Islands subarea directed pollock fishery.

The 2002 Stock Assessment and Fisheries Evaluation report for BSAI pollock (see **ADDRESSES**) provides an acceptable biological catch level for a directed pollock fishery in the Aleutian Islands subarea based on the condition of the pollock stock.

This final rule provides that any directed pollock fishery authorized in the Aleutian Islands subarea must be conducted outside of critical habitat with seasonal apportionments to temporally disperse the harvest. The pollock fishery conducted in this manner will meet the temporal and spatial dispersion of harvest required by the 2001 BiOp and FMP BiOp.

However, NMFS does acknowledge the concerns expressed by the Council regarding potential impacts of a new directed pollock fishery in the Aleutian Islands subarea on other ecosystem components and on other components of the fishing industry. As such, the 2003 harvest specifications for the BSAI will close the Aleutian Islands subarea to directed fishing for pollock and establish an Aleutian Islands subarea pollock TAC that allows only incidental catch of pollock in other Aleutian Islands subarea groundfish fisheries. NMFS will continue analysis of the potential impacts of a new Aleutian Islands subarea directed pollock fishery and will provide the Council with updated information.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that

this final rule is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that duplicate, overlap, or conflict with this action.

The Steller sea lion protection measures have been determined to be significant for purposes of Executive Order 12866.

NMFS prepared two final regulatory flexibility analyses (FRFA) that described the economic impact this final rule would have on small entities. Copies of these FRFAs are available from NMFS (see **ADDRESSES**). A description of the final action, the reason the action is being considered, and the legal basis for this action are contained at the beginning of this preamble.

One FRFA analyzed the Steller sea lion protection measures. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded, based on the numbers of operations in 2000, that approximately 590 small entities would be directly regulated by the rule. This includes 514 catcher vessels, 33 catcher/processors, 37 shoreside processors, and 6 CDQ groups. The action will create the following new recordkeeping and reporting requirements: (a) questions will be added to the annual FFP renewal application and renewal forms to enable NMFS to identify which vessels will be directed fishing in the Pacific cod, pollock, and Atka mackerel fisheries; (b) vessels, other than jig vessels, will be required to operate a VMS while they are operating in the BSAI or GOA reporting areas when the pollock, Atka mackerel, or Pacific cod fishery they are permitted for is open; (c) an additional question asking CDQ operators to report target species has been added to each CDQ catch report; and (d) Atka mackerel vessels will have to carry additional observers when fishing in Aleutian Islands subarea critical habitat.

The Council and NMFS considered five regulatory alternatives. These were analyzed at length in the final SEIS. Three of these, Alternatives 2, 3 and 5, have adverse impacts on small entities that are greater than those in Alternative 4 (the preferred alternative). Alternative 2 dramatically reduced the TACs available to the fisheries. All three alternatives placed far more of the fisheries gross revenues “at risk” due to restrictions on fishing in closed or restricted critical habitat. These revenue reductions would have led to lower revenues for small entities in the fishery than the revenue reduction in Alternative 4. Alternative 1 had smaller adverse impacts on small entities than those in Alternative 4. However, this