

alternative was the “no action” alternative under which regulatory measures, which were implemented by emergency rule and designed to protect Steller sea lions, would expire (note that not all regulations to protect the Steller sea lions had been implemented by emergency rule). This alternative was not adopted because the Council found it inadequate to avoid the likelihood that the groundfish fisheries would jeopardize the continued existence of the western DPS of Steller sea lions and adversely modify its critical habitat. Two additional options to Alternative 4 might have produced a reduced impact on the small vessel fleets. The first option would have exempted certain classes of small vessels from fishing restrictions in the vicinities of Chignik, and the second one would have established a system of “gear zones” along the coast in the GOA and would have restricted larger vessels to a greater extent than small ones in the zones closer to the shore. The additional small boat exemptions for Chignik were not included because opening these areas would reduce the value as a control site for evaluating management measures and increase the likelihood for competitive interactions with Steller sea lions, and also because this site has not been economically important to the small boat fleets. The Council decided not to include the GOA “gear zone” option due to potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety). However, vessel owners’ costs associated with VMS purchases required under the preferred alternative will be reimbursed through a NMFS grant to the Pacific States Marine Fisheries Commission.

A second FRFA has been prepared for the Chiniak Gully experiment implemented by this final rule. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded that most of the vessels that would trawl for groundfish in the proposed Chiniak Gully area during late summer are small entities. This included 145 small entities. Most of these affected vessels are homeported in and operate out of the city of Kodiak, adjacent to the proposed closure area. Although vessels will be able to harvest in other locations in the vicinity of Kodiak Island and should be able to recover most of their lost revenues, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. Because harvest may be taken elsewhere and the restriction will last

no more than 3 years, the overall impact on the affected vessels should not be large. As these small vessels potentially experience higher costs, they may see some reduction in their cash flow and profits while the program is in effect. Since the affected vessels are mostly small entities, and large trawl entities would not be affected by this trawl closure, the impact may be disproportionately large on small entities. This action imposes no additional reporting requirements on small entities. The alternatives of no action and of excluding small entities from the action were considered and would have reduced the burden on small entities, compared to the preferred alternative. However, the no action alternative would have prevented the experiment from proceeding. Excluding small entities would have eliminated most of the vessels active in the experimental area. Therefore these alternatives would not meet the objective of the action.

Pursuant to the National Environmental Policy Act, NMFS prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS, and the final document was issued November 23, 2001 (66 FR 58734). An analysis of the Chiniak experiment is provided in the 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 final SEIS and EA/RIR/FRFA are available from NMFS (see **ADDRESSES**). No significant impacts on the human environment were anticipated from the Chiniak Gully experiment based on the analysis in the EA/RIR/FRFA. Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action complies with ESA requirements. Potential impacts on marine mammals resulting from fishing activities conducted under this final rule are discussed in the SEIS for this action.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB. Public reporting burden for these collections is listed by OMB control number below.

OMB No. 0648–0206: for a Federal Fisheries Permit application (including the information necessary to register a vessel using trawl gear to conduct directed fishing operations for Atka mackerel in the harvest limit area), 21

minutes per response; OMB No. 0648–0445: 6 hours to install a VMS unit; 12 minutes to fax a check-in report that the VMS is operational; 5 seconds per automated position report; and 4 hours per year for VMS maintenance; and OMB No. 0648–0269: for CDQ target species reporting; 15 minutes per catch report.

These response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Formal and informal section 7 consultations under the ESA were completed for this final rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In the 2001 BiOp and memorandum dated December 11, 2001, from the Office of Protected Resources (OPR) to the Office of Sustainable Fisheries, the Director of the OPR determined that fishing activities described in this final rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the biological opinion prepared for the groundfish fisheries managed pursuant to this rule.

*Greenpeace, et al. v. National Marine Fisheries Service*, No. C98–492Z (W.D. Wash.). The Court held that the biological opinion’s findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. NMFS is seeking Plaintiff’s agreement that the 2003 fisheries will commence pursuant to the Steller sea lion protection measures specified in the 2001 BiOp and implemented by this final rule pending completion of the remand. If such agreement is reached, it will be filed with the Court. If agreement is not reached, NMFS will take such other action as is necessary to ensure the fisheries’ compliance with