

discussed earlier in detail in the preamble to the proposed rule (68 FR 7750, February 18, 2003).

NMFS prepared an IRFA that describes the impact this action may have on small entities. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot gear fishing sector. This action is expected to affect six regulated small entities by removing a fishing restriction. These entities are the pot vessels fishing for Pacific cod in the waters within 3 nm of the two haulouts. This action does not impose new reporting, recordkeeping or other compliance requirements on regulated small entities. No Federal rules exist that duplicate, overlap or conflict with the proposed rule. This action does not have any adverse impacts on regulated small entities. No significant alternatives to the proposed rule exist that would have lower economic impacts on these entities.

Two alternatives were considered for the Caton Island and Cape Barnabas pot fishing vessels: (1) No exemption for these vessels (status quo) and (2) exempt pot fishing vessels from SSL closures from 0 to 3 nm around Caton Island and Cape Barnabas. Alternative 1 is the baseline alternative, and federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts. Also, the status quo would not provide consistency between Federal and State regulations governing fishing restrictions within Steller sea lion protection areas. The preferred alternative would allow federally-permitted vessels used to participate in the GOA Pacific cod pot fishery to fish within 3 nm of the haulouts at Caton Island and Cape Barnabas. This would reduce the Pacific cod revenues placed "at risk" by the restrictions of the status quo alternative by up to \$63,000. The areas in question are small parts of larger fishing areas, and fishermen may currently be making up a large part of the harvest foreclosed by the restrictions by fishing elsewhere. This alternative is not believed to create jeopardy for the Steller sea lions or adversely modify its critical habitat. This alternative would not trigger Executive Order 12866 significance criteria since the maximum revenue impact is likely to be \$63,000 at the outside.

NMFS Alaska Fisheries Science Center (AFSC) data show that, in 2000, 252 pot catcher vessels and four pot catcher/processors fished for groundfish

in the GOA. The numbers fishing near the waters that are opened under this action are smaller. An examination of the numbers of vessels fishing for Pacific cod with pot gear in state waters within the South Peninsula management area (the location of the Caton Island haulout) found 31 in 1999 and 51 in 2000. An examination of the numbers fishing in the Kodiak management area (the location of the Cape Barnabas haulout) found 41 in 1999 and 44 in 2000. An estimated six vessels actually fished within the Caton Island and Cape Barnabas haulouts in each of those years. Information on gross revenues from the AFSC indicates that all vessels fishing for Pacific cod with pots in the GOA are classified as small entities according to Small Business Administration criteria.

At its October 2001 meeting, the Council recommended SSL protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee. In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy or destruction or adverse modification of their critical habitat based on the best scientific information available. The SSL Committee then crafted groundfish fisheries management measures that first provided protection for Steller sea lions. If some flexibility existed, the measures were crafted to minimize adverse economic impacts to affected fishermen and fishing communities, as long as protection for Steller sea lions was maintained, as required by the ESA.

These recommendations included a revised harvest control rule for pollock, Pacific cod, and Atka mackerel; closed areas and seasons based on the location, fishery, and gear type; critical habitat harvest limits for the pollock and Atka mackerel fisheries in certain areas of critical habitat; and requirements to allow for monitoring of pollock, Pacific cod, and Atka mackerel directed fishing. The recommendations of the SSL Committee were further modified by the Council.

In November 2001, the Alaska Board of Fisheries (BOF) reviewed the Council's recommendation for Steller sea lion protection measures. These measures generally consist of fishery or gear specific directed fishing closures within 3, 10, or 20 nautical miles (nm) of Steller sea lion rookeries or haulouts. NMFS and the Council expected that the BOF would mirror these regulations in State waters during the parallel fisheries for pollock, Atka mackerel, and Pacific cod. This is necessary to implement the protection measures that

included fishery prohibitions that extended into State waters.

The BOF responded by authorizing the Commissioner of the Alaska Department of Fish and Game, through emergency order, to open and close seasons and areas as necessary to mirror federal regulations for the purpose of protecting Steller sea lions. However, the BOF did provide two exemptions for vessels fishing for Pacific cod with pot gear around the Caton Island and Cape Barnabas haulouts.

The two exceptions in the parallel fishery would allow directed fishing for Pacific cod with pot gear between 0–3 nm of the Caton Island and Cape Barnabas haulouts. The proposed action recommended by the Council, and assessed in the 2001 Biological Opinion (BiOp), closed 0–3 nm to all gear types except vessels using jig gear. Thus, the BOF action authorizes pot gear fishing within 0–3 nm of two haulouts that was not considered or assessed in the 2001 BiOp.

The rationale stated by the BOF for this discrepancy was that few animals have been seen at these two sites over the last decade; these sites are haulouts instead of rookeries; and that other sites in the region would remain closed to pot gear fishing inside 3 nm of haulouts. Hook-and-line gear was not included in the exemption because this gear type is not authorized in the State-managed Pacific cod fishery.

Because the BOF action did not contain these Caton Island and Cape Barnabas closures, the SSL protection measures under state regulations were not consistent with Federal rules because they allowed vessels without a federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations, as well as being different from the action that was consulted on under the ESA. In November, 2001, NMFS informally consulted on these changes and determined that they were not of sufficient extent to re-initiate formal consultation under the ESA. NMFS informed the Council at its February 2002 meeting that no new scientific analyses were necessary in order to consider the BOF action on GOA haulouts, therefore, the Council requested that an analysis be developed immediately for an action to remove fishing restrictions around these sites.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.