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SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its October 2001 meeting, the Council recommended Steller sea lion (SSL) protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee (hereafter referred to as the SSL Committee but was formerly called the "RPA Committee"). In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy to their continued existence 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 provided adequate protection for Steller sea lions in compliance with the Endangered Species Act (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. The complete set of recommendations by the Council is detailed in the preamble to the emergency interim rule implementing Steller sea lion protection measures and groundfish harvest specifications in 2002 (67 FR 956, January 8, 2002).

NMFS formally consulted under section 7 of the ESA on the Steller sea lion protection measures. A biological opinion (2001 BiOp) was appended to the Steller sea lion SEIS which evaluated the effects of the preferred alternative on ESA listed species (see **ADDRESSES**). The agency determined in the 2001 BiOp that the protection measures proposed by the Council were not likely to jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or result in the destruction or adverse modification of its critical habitat. Based on the 2001 BiOp and the environmental impacts disclosed in the

Steller sea lion SEIS, the Council adopted the preferred alternative (with modifications) and forwarded it to NMFS for approval and implementation. NMFS implemented the preferred alternative by emergency interim rule prior to the start of the 2002 fishing year (67 FR 956, January 8, 2002, amended 67 FR 21600, May 1, 2002, 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and extended 67 FR 34860, May 16, 2002). These protection measures were published as a proposed rule for 2003 and beyond (67 FR 56692, September 4, 2002) and the final rule became effective January 1, 2003 (68 FR 204, January 2, 2003). On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the biological opinion ("2001 BiOp") NMFS prepared for the groundfish fisheries managed pursuant to the Steller sea lion protection measures published on January 2, 2003 (68 FR 204). 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. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp "shall remain effective until June 30, 2003," while NMFS complies with the remand.

In order for the Steller sea lion protection measures to be fully implemented, in November 2001, the State of Alaska Board of Fisheries (BOF) adopted parallel regulations providing for an extension of Steller sea lion protection measures in State waters (0-3 nm) during the State parallel fishery. The parallel groundfish fishery is defined as the Pacific cod, walleye pollock, and Atka mackerel fisheries in State waters opened by the Commissioner of the Alaska Department of Fish and Game (ADF&G). The opening was effected under emergency order authority to correspond with the times, area, and, unless otherwise specified, the gear of the Federal season in adjacent Federal waters (Alaska Administrative Code 5 AAC 28.087(c), January 3, 2002).

As part of its November 2001 action, the BOF adopted a series of fishery closure areas that almost mirrored those areas requested by the Council under the Steller sea lion protection measures. The Federal regulations (implementing the Council's preferred alternative) contained closures for Pacific cod fisheries using pot gear at Caton Island (King Cove area) and Cape Barnabas

(Kodiak) within 3 nm of those ESA listed haulouts. However, the BOF action did not contain these closures for the parallel fishery, and this allowed vessels without a Federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations. In November 2001, NMFS informally consulted on allowing Pacific cod fisheries using pot gear at Caton Island and Cape Barnabas within 3 nm of those ESA listed haulouts and determined that these changes to the Steller sea lion protection measures were not of sufficient extent to re-initiate formal ESA consultation.

In October 2002, the Council recommended proposed regulations to remove Pacific cod pot fishing restrictions in waters within 3 nm of Cape Barnabas and Caton Island for federally permitted vessels. These proposed regulations remove the restrictions from Table 5 of part 679 for these two locations.

Classification

NMFS has determined that the opening of closed Pacific cod pot fishing within 3 nm miles of Caton Island and Cape Barnabas is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Under Executive Order 12612, this proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment. Because no federalism issues are implicated with this action, the mandatory requirements contained in Executive Order 13132 for consultation on federalism issues among Federal, State, and local governments are not triggered.

Nothing in this action results in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. This action is not expected to result in increases of Pacific cod harvest beyond those experienced with the opening of the State parallel fishery in these areas. With no additional removals of Pacific cod expected, informal ESA consultation concluded that this action is not likely to adversely affect listed species.

The analysis for this action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

NMFS prepared an IRFA that describes the impact this action may have on small entities. Earlier sections of this preamble describe the reasons