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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XA975

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; intent to prepare an environmental impact statement, request for comments.

SUMMARY: NMFS, in consultation with the North Pacific Fishery Management Council (Council), announces its intent to prepare an environmental impact statement (EIS) on Steller sea lion protection measures for the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries, in accordance with the National Environmental Policy Act of 1969. The proposed action would restrict groundfish fishing in the BSAI to ensure the groundfish fisheries are not likely to result in jeopardy of continued existence or adverse modification or destruction of designated critical habitat (JAM) for the western distinct population segment (DPS) of Steller sea lions. The western DPS of Steller sea lions is listed as endangered under the Endangered Species Act (ESA) and NMFS must ensure that the groundfish fisheries are not likely to result in JAM for this DPS. NMFS intends to work with stakeholders to develop fisheries restrictions that avoid the likelihood of JAM and minimize the potential economic impact on the fishing industry to the extent practicable while meeting the requirements of the ESA. The analysis in the EIS will determine the impacts to the human environment resulting from this proposed action and the

alternatives. In scoping for the EIS, NMFS will accept written comments from the public to determine the issues of concern; the appropriate range of management alternatives; and the direct, indirect, and cumulative impacts. NMFS, in coordination with the Council, will conduct a public meeting at the October 2012 Council meeting to inform the public of this proposed action and alternatives, present issues and potential impacts, and gather public comment.

DATES: Written comments must be received by 5 p.m. Alaska Standard Time (AST), October 15, 2012.

ADDRESSES: You may submit comments on this action, identified by NOAA-NMFS-2012-0013, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0013 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.
- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS,

Attn: Ellen Sebastian. Deliver comments to 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the 2010 environmental assessment and biological opinion prepared for the Steller sea lion protection measures are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586-7228.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone. The management of these marine resources, with the exception of certain marine mammals and birds, is vested in the Secretary of Commerce. The Council has the responsibility to prepare fishery

management plans for those marine resources off Alaska requiring conservation and management. Management of the Federal groundfish fishery in the BSAI is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP, its amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA) and the ESA.

#### Alaska Groundfish Fisheries Steller Sea Lion Protection Measures

Steller sea lion protection measures have been used to manage the groundfish fisheries since 1999 (64 FR 3437, January 22, 1999) and have been annually revised in 2000 through 2004. Details of these rules are available at the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/>. The protection measures have been used to mitigate the potential adverse effects of the groundfish fisheries on Steller sea lions and on their designated critical habitat. Steller sea lions may be incidentally taken in fishing gear, may be disturbed by fishing activities, and may compete with groundfish fisheries for important prey species. Atka mackerel, Pacific cod, and pollock are important Steller sea lion prey species that also are harvested in the groundfish fisheries. The protection measures temporally and spatially disperse Atka mackerel, Pacific cod, and pollock harvest to reduce potential impacts from the groundfish fisheries on Steller sea lions and on their designated critical habitat. Spatial protection measures include closures of areas to groundfish fishing near Steller sea lion haulouts and rookeries, and in foraging areas, to reduce potential interactions with Steller sea lions and fishing vessels and to reduce potential impacts on prey resources in locations important to Steller sea lions. Harvest of pollock, Pacific cod, and Atka mackerel also

is temporally dispersed through seasonal apportionments of the annual total allowable catch for these species. The details of the current Steller sea lion protection measures for the Alaska groundfish fisheries are available on the NMFS Alaska Region website at

<http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/>.

In 2010, NMFS completed an ESA section 7 consultation on the effects of the Alaska groundfish fisheries on ESA-listed species, including the western DPS of Steller sea lions, and on designated critical habitat. Based on the best available commercial and scientific information, the consultation resulted in a biological opinion (2010 Biop) that found that the Steller sea lion protection measures implemented in the BSAI since 2003 could not ensure that the groundfish fisheries were not likely to result in JAM for the western DPS of Steller sea lions. A reasonable and prudent alternative (RPA) to the protection measures was included in the 2010 Biop to ensure the groundfish fisheries were not likely to result in JAM. This RPA was implemented by an interim final rule as the 2011 Steller sea lion protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010).

The 2011 Steller sea lion protection measures primarily affected the Pacific cod and Atka mackerel fisheries in the Aleutian Islands subarea and were in addition to previous measures adopted since 2004. The 2010 Biop determined that the weight of evidence indicated that fisheries may remove prey species important to Steller sea lions, which may affect the reproduction and numbers of Steller sea lions and adversely modify the conservation value of their critical habitat in Statistical Areas 543, 542, and 541. Competition with fisheries for prey is likely one component of an intricate suite of natural and anthropogenic factors affecting Steller sea lion numbers and reproduction. While natural factors may be contributing, NMFS must ensure that actions authorized by NMFS are not likely to appreciably reduce the likelihood of

survival and recovery of the western DPS of Steller sea lions, which is required to avoid the likelihood of JAM.

The RPA was developed based on performance standards that address the effects of the groundfish fisheries—and the population status and foraging behavior of Steller sea lions—in the Aleutian Islands subarea. The details of these standards are in the 2010 Biop (see ADDRESSES). The RPA was structured to mitigate effects of the fishery in locations where Steller sea lion abundance continues to decline (Statistical Areas 543, 542, and 541). One of the performance standards requires that the protection measures be commensurate with the rate of Steller sea lion population declines, with more stringent measures in those locations with greater population declines. The RPA meets this standard by applying more fisheries restrictions in Area 543, where Steller sea lions have the highest population decline, and applying fewer fisheries restrictions in Areas 542 and 541, where Steller sea lion population decline is less than in Area 543. Implementation of the RPA is expected to minimize local competition between Steller sea lions and the Atka mackerel and Pacific cod fisheries in Area 543. This is intended to improve foraging success and prey availability for juvenile and adult Steller sea lions, which is expected to lead to higher survival and natality rates. The RPA also reduces the competitive overlap between Steller sea lions and fisheries for Atka mackerel and Pacific cod in Areas 542 and 541. This is intended to improve foraging success and prey availability for Steller sea lions, particularly adult females with dependent young in winter, which is expected to lead to higher natality rates and survival.

#### Litigation on the 2011 Steller Sea Lion Protection Measures

On March 5, 2012, NMFS was ordered by the U.S. District Court of Alaska to prepare an EIS on the Steller sea lion protection measures implemented in January 2011 (75 FR 77535,

December 13, 2010, corrected 75 FR 81921, December 29, 2010). The Court's decision and order for this action are available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/>. The Court ordered NMFS to prepare an EIS for the Steller sea lion protection measures because NMFS failed to provide sufficient environmental information for informed public comment to the agency decision-making and failed to provide for adequate public participation when it prepared the environmental assessment for this action in 2010 (see ADDRESSES). Two areas identified by the Court as scientifically controversial were the use of single species rather than multispecies models for groundfish fisheries stock assessments and the effects of the groundfish fisheries on the availability of Steller sea lion prey resources.

The Court ordered the completion of the final EIS by March 2, 2014. The Court also ordered that any subsequent rulemaking for the BSAI groundfish fisheries as a result of the EIS must be completed by January 1, 2015.

#### Proposed Action

The proposed action is a set of protection measures that would ensure groundfish fishing in the BSAI is not likely to result in JAM for the western DPS of Steller sea lions. Spatial and temporal dispersion of the harvest of Steller sea lion prey species would be included in the protection measures to reduce potential adverse impacts. The protection measures should ensure the groundfish fisheries are not likely to result in JAM while minimizing economic impact on fishery participants to the extent practicable.

#### Alternative Management Measures

The EIS will evaluate a range of alternative management measures for the BSAI groundfish fisheries with focus on the Aleutian Islands groundfish fisheries management.

Alternatives may be developed based on the elements identified here, and those developed through the public scoping and Council processes. Possible alternatives could be constructed from one or more of the following alternatives, and public suggestions on the specific features for these alternatives are requested:

1. The status quo alternative to continue implementation of the 2011 Steller sea lion protection measures and management of the groundfish fisheries under the FMP.
2. An alternative recommended by the Council that is intended to maintain protection of Steller sea lions while reducing fishing restrictions imposed by the 2011 Steller sea lion protection measures, particularly for the Pacific cod and Atka mackerel fisheries in the Aleutian Islands subarea.
3. An alternative that provides precautionary, additional protection to Steller sea lions in the Aleutian Islands beyond those provided by the 2011 Steller sea lion protection measures.
4. An alternative that changes the 2011 Steller sea lion protection measures based on information since development of the 2010 biological opinion, and may be more or less restrictive than status quo.

The Council will recommend alternatives for analysis in the EIS. The Council's Steller Sea Lion Mitigation Committee may review the latest scientific information regarding the biology of Steller sea lions and fisheries interaction, and may develop alternative Steller sea lion protection measures for the Aleutian Islands groundfish fisheries for the Council's consideration. NMFS may develop additional alternatives to ensure that a reasonable range of alternatives is analyzed and that its responsibilities under the Magnuson-Stevens Act, the ESA, and other applicable law are met.



## Preliminary Identification of Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in the EIS. The analysis will evaluate the impacts of the alternatives for all resources, species, and issues that may be directly or indirectly affected by the Steller sea lion protection measures for the BSAI groundfish fisheries. The following components of the biological and physical environment may be evaluated: (1) target and non-target fish stocks, forage fish, and prohibited species (including Pacific halibut, Pacific salmon, and crab); (2) species listed under the ESA and their critical habitat; (3) seabirds; (4) marine mammals; (5) habitat; and (6) the ecosystem. The target species analysis would include examination of the use of single species and multispecies stock assessment models. The latest information regarding interactions between the groundfish fisheries and Steller sea lions for prey resources would be examined in the EIS. The direct, indirect, and cumulative impacts on the environmental components would be based on the environmental assessment prepared for the 2011 Steller sea lion protection measures with revisions based on the alternatives and issues identified in scoping, and the best available information during the development of the EIS.

The baseline used to compare the impacts of the alternatives on the human environment is recommended to be the human environment in the BSAI between 2004 and 2010. This time period represents the condition of the environment before the implementation of the 2011 Steller sea lion protection measures, includes the most complete data set of fisheries catch information, and provides a reasonable time period to compare potential effects of all alternatives, including status quo, which has only been implemented for 1 year. Public review and comments on the baseline for the analysis during the scoping period are welcome.

Social and economic impacts caused by changes to Steller sea lion protection measures also would be considered in terms of the effects on the following groups of individuals: (1) those who participate in harvesting groundfish (particularly Pacific cod and Atka mackerel in the Aleutian Islands subarea); (2) those who process and market Pacific cod and Atka mackerel and their products; (3) those who consume Pacific cod and Atka mackerel products; (4) those who rely on living marine resources caught in the management area, particularly Pacific cod, Atka mackerel and Steller sea lions; (5) those who benefit from commercial, subsistence, and recreational fisheries and Steller sea lion harvest; and (6) fishing communities, including Adak, AK.

#### Public Involvement

Scoping is an early and open process for determining the scope of issues, alternatives, and impacts to be addressed in an EIS, and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this notice, NMFS is notifying the public that an EIS and decision-making process for this proposed action have been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, potential impacts, and alternatives that should be considered for the Steller sea lion protection measures. Written comments will be accepted at the address above (see ADDRESSES). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record for this proposal and will be available for public inspection.

The public is invited to participate at the Council and any Steller Sea Lion Mitigation Committee meetings where the latest scientific information regarding Steller sea lions and fisheries interactions with the BSAI groundfish fisheries is reviewed and alternative Steller sea lion protection measures may be developed and evaluated. During the scoping period, and in conjunction with the October 2012 Council meeting, a public meeting will be held where this proposed action and alternatives, issues, and potential impacts will be discussed. The public may participate by submitting written comments or by testifying at these public meetings. Notice of future Council and Steller Sea Lion Mitigation Committee meetings, and any other public meetings where these issues will be discussed, will be published in the Federal Register and posted

on the Internet at <http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/>. Please visit this website for more information on this EIS and for guidance on submitting effective public comments.

Dated: April 12, 2012.

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Emily H. Menashes,  
Acting Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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