State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Illinois:				
Huntley, village of, Kane and McHenry Counties	170480	June 6, 1975, Emerg.; December 15, 1992, Reg.; May 19, 1997, Susp	.....do	Do.
McHenry County, unincorporated areas	170732	January 15, 1974, Emerg.; September 30, 1981, Reg.; May 19, 1997, Susp	.....do	Do.
Minnesota: North Branch, city of, Chicago County	270072	September 15, 1987, Emerg.; May 19, 1997, Reg.; May 19, 1997, Susp	.....do	Do.
Region VI				
Louisiana: Caddo Parish, unincorporated areas	220361	November 9, 1979, Emerg.; September 5, 1990, Reg.; May 19, 1997, Susp	.....do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: April 28, 1997.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 97–11639 Filed 5–2–97; 8:45 am]

BILLING CODE 6718–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1831

Revision to the NASA FAR Supplement To Delete Class Deviation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This action deletes the class deviation from the cost principle at 1831.205–18 on independent research and development (IR&D).

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph LeCren, Code HK, (202) 358–0444, fax (202) 358–2–3220, or e-mail joseph.lecren@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

NASA published a class deviation as a final rule in the **Federal Register** (59 FR 46359–46360) September 8, 1994. The class deviation eliminated the provision at FAR 31.205–18(e) against the treatment of contractor IR&D contributions under NASA cooperative arrangements as allowable indirect costs. A FAR case was initiated to revise the IR&D cost principle to remove that provision at 31.205–18(e). A final FAR rule was published in the **Federal Register** (62 FR 12704–12705) March 17, 1997, making that revision. The publication of the revised FAR cost principle eliminates the need for the NASA class deviation. The revised FAR cost principle is effective May 16, 1997.

Impact

NASA certifies that this change to its regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This change does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1831

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1831 is amended as follows:

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR 1831 continues to read as follows:

Authority: U.S.C. 2473(c)(1).

§ 1831.205–18 [Removed]

2. Section 1831.205–18 is removed.

[FR Doc. 97–11586 Filed 5–2–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 961217358–6358–01; I.D. 041995B]

RIN 0648–XX77

Threatened Fish and Wildlife; Change in Listing Status of Steller Sea Lions Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: The Steller sea lion, *Eumetopias jubatus,* is currently listed as threatened, pursuant to the Endangered Species Act (ESA), throughout its range, which extends from California and associated waters to Alaska, including the Gulf of Alaska (GOA) and Aleutian Islands, and into the Bering Sea and North Pacific and into Russian waters and territory. Based on biological information collected since the species was listed as threatened in 1990, NMFS is now reclassifying Steller sea lions as two distinct population segments under the ESA. The Steller sea lion population segment west of 144 °W. long. (a line near Cape Suckling, AK) is reclassified as endangered; the threatened listing is being maintained for the remainder of the U.S. Steller sea lion population.

EFFECTIVE DATE: June 4, 1997.

ADDRESSES: Requests for copies of this rule or a complete list of references should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910

or the Director, Protected Resources Management Division, NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, 907–586–7235, or Margot Bohan, 301–713–2322.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. population of Steller sea lions, which numbered close to 192,000 adults and juveniles (nonpups) 30 years ago, declined by 64 percent to less than 69,100 nonpups by 1989, with the majority of the decline occurring in Alaska between the Kenai Peninsula and Kiska Island. As a result of this precipitous decline, the species was listed as threatened under provisions of the ESA in 1990 (55 FR 12645, April 5, 1990; see also, 55 FR 13488, April 10, 1990; 55 FR 49204, November 26, 1990; and, 55 FR 50005, December 4, 1990).

The current rule listing the Steller sea lion as a threatened species contains a series of management measures to reduce direct causes of mortality, to restrict opportunities for intentional and unintentional harassment of Steller sea lions, and to minimize disturbance and interference with Steller sea lion behavior, including disruption of foraging behavior, especially at pupping and breeding sites.

In conjunction with the listing, NMFS also appointed a Recovery Team (Team) with the primary goal of developing a Recovery Plan (Plan) to promote recovery of the Steller sea lion population to a level appropriate to justify removal from ESA listings. The Plan was published in December 1992, identifying factors limiting to the population and recommending research and management actions to aid population recovery.

As a result of ESA section 7 consultations on the effects of the North Pacific federally-managed groundfish fisheries, NMFS developed protective measures under the Magnuson Fishery Conservation and Management Act (Magnuson-Stevens Act) to reduce the effects of certain fisheries on Steller sea lion foraging (see 56 FR 28112, June 19, 1991; 57 FR 2683, January 23, 1992; and 58 FR 13561, March 12, 1993; current protections are codified at 50 CFR §§ 672.24(e) and 675.24(f)). In 1993, NMFS designated critical habitat for the species (at 58 FR 45269, August 27, 1993), which includes all U.S. rookeries, major haulouts in Alaska, horizontal and vertical buffer zones around these rookeries and haulouts, and three aquatic foraging areas in North Pacific waters—Seguam Pass, southeastern Bering Sea shelf and Shelikof Strait (50 CFR 226.12).

At the time that they were listed as threatened under the ESA, no subpopulation distinction was identified for Steller sea lions. NMFS determined that there was insufficient information available to consider animals in different geographic regions as separate populations. However, subsequent analysis of mitochondrial DNA provided new information, leading to a conclusion that a distinct population segment was identifiable (Bickham et al., 1996). Furthermore, based on a phylogeographical analysis (Dizon et al., 1992) using Steller sea lion population dynamics, data from tagging, branding and radio-telemetry studies, phenotypic data, and genetics, NMFS has been able to delineate two discrete population segments of Steller sea lions within their geographic range: an eastern segment, which includes animals east of Cape Suckling, AK (144 °W. long.) and a western segment, which includes animals at and west of Cape Suckling, AK.

Since 1990, NMFS, the Alaska Department of Fish and Game (ADFG), the Oregon Department of Fish and Wildlife, and the Canadian and Russian governments have continued to assess the Steller sea lion populations and to study the cause(s) of the decline. Results of 1990–94 surveys to monitor abundance trends indicated that the number of adults and juveniles continued to decline in Alaska (4 percent per year) during that period. Since 1994, preliminary findings indicate an overall decrease of 7.8 percent in nonpup numbers at trend sites (rookeries and haulouts that have been counted during every major survey) in Alaska. Pup numbers in the GOA and Aleutian Islands declined at a rate of 8 percent per year during 1990–1994. In addition, a partial survey of Steller sea lion pups conducted at nine rookeries from Southeast Alaska to the eastern Aleutian Islands indicates a 6.1 percent decrease in pup numbers at surveyed sites since 1994.

Because this information indicates a continued decline, NMFS initiated a formal population status review to determine whether a change in listing status was warranted (58 FR 58318, November 1, 1993). NMFS received 16 comments in response to the status review notice.

To complete the status review and to calculate the future trends of the U.S. Steller sea lion populations, should the historical trends persist, population viability analyses (PVAs) were prepared. NMFS determined that PVAs were only necessary for the western population segment, because the eastern population segment is likely to maintain current abundance for the foreseeable future. Based on the 1985–94 and 1989–94 population trends, models of the declining western population segment were developed to evaluate the probability of persistence of the population over the foreseeable future (the next 100 years). Two PVA models were developed based on a stochastic model of exponential growth that required only count data and count variance to predict future trends. Essentially, the models project the future population trend, using the historical trend, and estimate the probabilities that specific population sizes will be reached based on both the trend and the observed variance around the historical trend. Only adult females were considered as part of the model because this is the population segment that dictates population growth in sea lions.

One model, an aggregate Kenai-Kiska Island (trend sites) model, was based on the trajectory of the sum of the rookery populations within the area. The second model was based on a simulation of the population trajectories of individual rookeries in the Kenai-Kiska area.

Both models predicted that the Kenai-Kiska population would be reduced to low levels within 100 years from the present if either the 1985–94 or the 1989–94 trend continues into the future. The Kenai-Kiska regional model predicted a 100 percent probability of extinction within 100 years from the 1985–94 trend data, and a 65 percent probability of extinction within 100 years if the 1989–94 trend continues.

Under each of these modeling scenarios, the results indicate that, if either trend persists, the next 20 years will be crucial to the survival of the western Alaska population of Steller sea lions.

On November 29–30, 1994, NMFS convened the Team to consider the appropriate ESA listing status for the species and to evaluate the adequacy of ongoing research and management programs. In the course of that meeting and in subsequent letters to the Assistant Administrator for Fisheries, NOAA, the Team recommended that NMFS list the Steller sea lion as two distinct population segments, split to the east and west of 144 °W. long. The Team recommended that the western population segment be listed as endangered and that the eastern population segment remain listed as threatened.

Based on the status review comments, recommendations from the Steller sea lion recovery team, the International

Union for the Conservation of Nature's (IUCN) vulnerability criteria and additional data and analyses compiled by NMFS (including genetics, phenetics, population trend data, and data from tagging/branding studies), NMFS issued a proposed rule and request for comments on October 4, 1995 (60 FR 51968), to delineate two distinct population segments of Steller sea lions and reclassify the segment west of 144 °W. long. as endangered, while maintaining the eastern segment as threatened pursuant to the ESA.

II. Comments and Responses on Proposed Rule To Reclassify

NMFS received 14 comments on the proposed rule (60 FR 51968, October 4, 1995) during the 90-day comment period. Four comments were received from environmental groups, three comments were received from Federal, state and local governments, one comment was received from an academic institution, one comment was received from Alaskan Native interest groups, four comments were received from fishing industry groups, and one comment was received from a private individual. These comments, which are discussed below, address the following issues: Separate population listings, listing status, population viability analysis, protective management measures, buffer zone exemptions and research, and research funding.

Separate Population Listings

Comment: The majority of commenters were in support of the proposal to separate the Steller sea lion species into two distinct segments. One commenter, however, questioned the segmentation into two distinct populations, as opposed to three or four populations. Another commenter recommended designating the line separating the population segments at 147° W. long., which is central Prince William Sound; this would follow the Federal groundfish districts for the eastern and western GOA. The commenter reasoned that this would still maintain the major haulout and pupping areas of Prince William Sound in the western population region, while enabling fishing to continue.

Response: NMFS was able to delineate two discrete populations of Steller sea lions within their geographic range using the phylogeographic method. Mitochondrial DNA analyses conducted on samples taken from newborn pups on rookeries from Oregon, Alaska, and Russia defined 52 haplotypes, which could be further grouped into eight maternal lineages. Cluster analysis indicates that these lineages can be divided into two genetically differentiated population segments, an eastern and a western segment with separation at Prince William Sound. Other supporting evidence for two discrete populations includes distinct population trends, rookery site fidelity of tagged/branded animals, and possible phenotypic differences (e.g., pup size, skull size). These results were presented at the September 1994 Workshop on the Use of Genetics Data to Diagnose Management Units, and the conclusion of two distinct population segments was endorsed by the workshop attendees.

NMFS' decision to separate the two populations at 144° W. long., as opposed to 147° W. long., was also based largely on genetics data and population trends. Steller sea lion declines have occurred between 144° W. and 147° W. long.; such has not been the case east of 144° W. long. Few sea lions are found between 144° W. long. and southeast Alaska where the population has been more stable. West of 144° W. long., however, sea lions are distributed relatively continuously and are declining. NMFS will continue genetics studies in order to better determine relationships between population segments and among rookeries. Clarification of the criteria used to determine the presence of distinct population segments is outlined in this rule under section III. Final Policy on Population Determinations.

Change in Listing Status

Comment: Several commenters indicated their support for a change in the listing status of the western population from threatened to endangered while maintaining a threatened status for the eastern population. Comments were also received by NMFS to reclassify Steller sea lions along the west coast of the U.S. (south of 49° N. lat.) to endangered. Other commenters stated that the current listing of the species as threatened provides NMFS with sufficient regulatory authority to protect Steller sea lions; therefore, a change in listing status to endangered for the western population segment is not necessary. In addition, delisting should be considered for the eastern population segment.

Response: The ESA requires that listing and reclassification decisions be made solely on the basis of the best scientific and commercial information available regarding the species' population status (section 4(b)(1)(A)). Each of the five factors described in section 4(a)(1) of the ESA must be considered in making a listing status determination and are discussed in this preamble under section IV. Listing Procedures: Summary of Factors Affecting the Species.

Steller sea lions are declining throughout their range, except in the eastern Aleutian Islands and Bering Sea (BSAI) regions where the numbers are increasing slightly. Nevertheless, the abundance there remains only a fraction of what it was 20 years ago. The Team reviewed the data on population trends, the PVA analysis for the western population segment in relation to the reclassification criteria in the Plan, as well as the ESA definition of ''endangered,'' and concluded that the western population segment should be listed as endangered. NMFS concurs with the recommendations of the Team and the IUCN Seal Specialist Group's listing criteria, which also recommend a classification of endangered.

The Team also agreed that there was continued concern for the eastern population segment of Steller sea lions, despite the fact that its current abundance may be stable. The history of declines in the eastern Aleutian Islands (Merrick et al., 1987) has shown that the Alaska Steller sea lion population decline has not followed a constant trajectory. Periods of apparent moderation in the decline seem to have been interspersed with periods of acute decline throughout the overall period of decline.

NMFS takes a risk-averse approach to downlisting or delisting species protected under the ESA. Although adult counts in southeastern Alaska are considered stable, preliminary data indicate a decline of 7.2 percent in 1995–96, and pup production decreased by 20.5 percent between 1989–90 and 1994–95. Steller sea lion numbers at the southern margin are declining and the range is shrinking.

Furthermore, during the nonbreeding season of animals from the eastern and western population segments mix at sea and at haulout sites. These animals cannot be visually differentiated, and animals from the western population segment need to be protected under the ESA wherever they occur.

Evaluating the population status of the eastern population segment without a consideration of its place in the overall species population is inappropriate. Prior to the decline, the proportion of Steller sea lions that resided within the eastern population segment was less than 10 percent of the entire species abundance (NMFS, 1995). Because of the western population segment's decline, the eastern population segment's numerical significance has increased. Thus,

although for listing purposes the western and eastern population segments may be considered discrete, the substantial decline that has occurred represents a threat to the continued existence of the entire species.

In consideration of the relatively small fraction of the entire population segment that exists in the eastern part of the range, and the limited knowledge of the underlying causes of the decline, the eastern population segment should maintain its threatened status under the ESA. The Team recommended that monitoring of the eastern population segment be continued to determine if delisting is appropriate, and delisting criteria will be developed by NMFS in consultation with the Team.

Population Viability Analysis

Comment: One commenter stated that the PVA used to evaluate the future trend of the U.S. Steller sea lion population was incomplete, misleading and, if applied to humans, would predict that the human population will increase to infinity. Another commenter indicated that the PVA should be peer-reviewed by independent experts. Some commenters expressed concern regarding the weight that would be given to the results of the Steller sea lion PVA. They noted difficulties in predicting future population trends with confidence when causal relationships are not understood and suggested that NMFS use the PVA results with caution in the listing status determination.

Response: NMFS believes that the PVA provides the best estimate of extinction risk possible with existing population data and scientific methods. It was submitted for review and approved by outside, independent experts. The validity of the predictions made by the PVA model(s) is conditioned on the validity of its premise. The central premise in the PVA modeling is that the decreasing population pattern of the past 25 years will continue into the distant future. The model assumes that the decline will not abate, and, in fact, there is no indication that it will. PVA models are not valid for increasing populations (and the authors do not apply the model(s) to increasing populations, such as the human population); therefore the commenter's analogy regarding humans is not appropriate. The upper limit on the size of the Steller sea lion population was ignored because the authors of the PVA were trying to answer the question: How long will the population persist if the present pattern of decline continues? The PVA represents an exploration into that query alone. NMFS recognizes the limitations of population modeling to accurately predict future trends for this population. Thus, although the PVA results have been considered in the status determination, these have not been given greater weight than population trend data and the scientific opinion of experts, both within and outside NMFS.

Protective Management Measures

Comment: Several commenters raised issues regarding the protective measures currently in place to aid recovery of Steller sea lions. Some commenters felt that additional/revised regulations were needed to provide improved protection. One commenter questioned the efficacy of the 3 nautical mile (nm) (5.5 kilometer (km)) buffer zones around certain rookeries west of 150 °W. long., restricting all human activities year-round. Another commenter indicated the need to support full partnerships with coastal communities and develop cooperative management programs. Two commenters suggested that NMFS, in consultation with the Team, convene a panel of independent experts to evaluate and make recommendations on the full range of fishery and resource management practices that may be useful for reversing the decline of Steller sea lions.

Response: Since the species' listing as threatened in 1990, NMFS has implemented various protective measures for Steller sea lions under the ESA and the Magnuson-Stevens Act. These measures are intended to reduce intentional and unintentional mortality and harassment, disturbance of breeding areas and reproduction, and the possible effects of commercial fishing on the availability of Steller sea lion prey.

The purposes of the buffer zones are: (1) To restrict opportunities for individuals to shoot at sea lions and to facilitate the enforcement of the restriction; (2) to reduce the likelihood of interactions with sea lions such as accidents or incidental takings in areas where concentrations of the animals are expected to be high; (3) to minimize disturbances and interference with sea lion behavior, e.g., boating activity, especially at pupping and breeding sites; and (4) to avoid or minimize other related adverse effects (which could include prey removal in the immediate areas surrounding the rookeries).

NMFS believes it is premature to propose changes to the Steller sea lion protective measures, because: (1) More time is required to assess what, if any, benefit has been derived from the actions currently in place; and (2) given the limited knowledge of the sea lion/fishery prey interaction and the effects of human disturbance, it is difficult to identify meaningful management actions in addition to those already in place. It will continue to be difficult to demonstrate a definitive causal link between Steller sea lion decline and fishery-related activities due to the complex nature of the interactions between fisheries and marine mammals on a large scale.

Buffer Zone Exemptions

Comment: One commenter remarked that the 3 nm (5.5 km) approach prohibition places an excessive burden on the Adak crab fleet by precluding crab fishing activities. The commenter explained further that the Adak crab fleet, by nature of fishing practices, fishing gear, bycatch composition and observer requirements, can be shown to address adequately each of the concerns associated with the restrictions of the buffer areas without the imposition of such restrictions. The commenter requested limited exemptions, waivers, or special permits for the Adak crab fleet to fish within the buffer areas.

Response: A mechanism is provided under existing regulations (55 FR 49204, November 26, 1990) to allow the public to petition the Regional Administrator, Alaska Region, NMFS, to issue exemptions for any activity that has historically or traditionally occurred within a buffer zone, is not likely to adversely affect sea lions, and for which there is no readily available and acceptable alternative to conducting the activity within a buffer zone. Notice of all such exemptions will be published in the **Federal Register**.

Research and Research Funding

Comment: Several commenters recommended an expansion of existing research efforts and offered specific recommendations for areas of research. The majority of commenters urged NMFS to place emphasis on investigating the temporal and spatial prey (fish) availability across the foraging range of the Steller sea lion and on examining the impact of changes in biomass of the forage fish/prey upon Steller sea lion. One commenter questioned whether NMFS is currently accounting for all catch and discards in groundfish fisheries, especially walleye pollock. Cooperative research and monitoring programs were recommended with an emphasis on the walleye pollock and other forage fish exploitation in Russian waters of the Bering Sea. Commenters recommended that NMFS reconvene the Team to review and revise the research priorities and recommendations in the Plan based on existing data and information from

ongoing research. Support was expressed for use of a peer review process, to examine plans for satellite telemetry studies, and food habits/foraging ecology research.

Response: NMFS is addressing the majority of these comments through the Steller Sea Lion Recovery Research Program, a federally-funded effort, cooperatively implemented by NMFS and ADFG since 1992. The Steller Sea Lion Recovery Research Program involves state and private research entities and receives input from the Team. At the November 29–30, 1994, Steller Sea Lion Recovery Team meeting, the Team concluded that individual research peer review workshops were needed to review research conducted to date and to define necessary changes in research program emphasis. This peer review process is considered an essential precursor to updating the Plan (revised Plan due in 1998).

NMFS intends to conduct peer reviews on several components of the Steller Sea Lion Recovery Research Program. The general goals of research peer review, as expressed by the Team, are to determine: (1) Whether the research facilitates recovery or leads to the identification of management actions to aid the species; (2) whether it is cost effective; and (3) whether the work has been completed or has reached a specified level of completion. More specifically, these recovery program component reviews are intended to: (a) Evaluate hypotheses being tested by the current suite of studies; (b) review program design and methods; (c) review results obtained to date; (d) evaluate whether current projects and methods are likely to adequately address hypotheses proposed; (e) evaluate how studies being done fit into the broader context of studies on Steller sea lions and their ecosystems; (f) evaluate the degree of and need for coordination among related studies; and (g) make recommendations for continuation, modification, or deletion of specific studies.

Research peer review workshops will focus on four components of the Steller Sea Lion Recovery Research Program: (1) Behavior—satellite telemetry at-sea/behavior on land; (2) health/physiology; (3) food habits/feeding ecology, and; (4) prey competition studies. These reviews will involve experts from outside NMFS and the Team to assess research conducted to date and to identify appropriate future actions that are most likely to stop the decline of Steller sea lions. This peer review process is also considered an essential precursor to updating the Recovery Plan. Steller sea lion peer review workshops are tentatively scheduled to begin in the fall of 1997.

III. Final Policy on Population Determinations

Only a ''species'' may be listed as threatened or endangered under the ESA. This term is defined under section 3 of the ESA to include any subspecies of fish or wildlife and any distinct population segment of any species of fish or wildlife that interbreeds when mature. On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS) published a policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722).

NMFS used the criteria in this policy to assess the presence of distinct population segments of Steller sea lions. The policy outlines three elements to be considered in deciding the status of a possible distinct population segment as endangered or threatened under the ESA:

(1) Discreteness of the population segment in relation to the remainder of the species to which it belongs.

(2) The significance of the population segment to the species to which it belongs.

(3) The population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).

Discreteness: A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (a) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (b) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The former criterion is particularly relevant for Steller sea lions. Genetic studies provide the strongest evidence that discrete population segments of Steller sea lions exist. Bickham et al. (1996) collected genetic samples from 224 Steller sea lion pups on rookeries in Russia, the Aleutian Islands, the western and central GOA, southeastern Alaska, and Oregon. Mitochondrial DNA analyses of these samples identified a total of 52 haplotypes (sets of alleles of closely linked genes that tend to be inherited together, uniquely identifying a chromosome) that could be further grouped together into eight lineages. Bickham et al. (1996) found a distinct break in haplotype distribution between the four western localities and the two eastern localities. Cluster analysis indicated that the eight lineages could be subdivided into two genetically differentiated populations, with the division at about Prince William Sound. Ono (1993) conducted similar analyses on samples obtained from 11 Steller sea lions on Año Nuevo Island, CA, and found seven haplotypes. Six of these were identical to those identified from southeastern Alaska and Oregon by Bickham et al. (1996), and one was unique to Año Nuevo Island, CA.

Tagging and branding studies provide further evidence that the breeding behavior of Steller sea lions probably reduces opportunities for genetic mixing among rookeries although Steller sea lions have been documented to travel large distances during the non-breeding season. The majority of females marked as pups, then later resighted as adults, have returned to their rookery of birth to breed (Calkins & Pitcher, 1982; NMFS, 1995). The few resighted females observed breeding at rookeries other than their natal site were all at rookeries near their birth rookery. This apparent natal site fidelity not only reduces genetic mixing among rookeries, but it also makes it less likely that declining rookeries will be bolstered by recruitment from other rookeries.

Satellite telemetry studies also provide evidence of ''homing'' behavior in Steller sea lions. Generally, tracked sea lions forage from a central place (either a rookery or nearby haulout) and return to that place at the end of a foraging trip that may vary in duration from hours to months (Merrick et al. 1994).

Population trend data provide further evidence of separation among these two population segments. The Steller sea lion population east of Cape Suckling (with the exception of the portion in southern California) has remained stable since the 1970s, whereas the population to the west has declined dramatically. It is also worth noting that the only break in the distribution of Steller sea lions along the Alaskan coast occurs in the Yakutat area, near the proposed longitudinal border that would delineate the western and eastern population segments.

Loughlin (1994) used the phylogeographic approach proposed by

Dizon et al. (1992) to discern population discreteness in Steller sea lions. Loughlin concluded, based on an evaluation of distribution, population response, phenotypic, and genotypic data, that Steller sea lions should be managed as two discrete populations, with the separation point at about 144 °W. long.

Significance: If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance should then be considered. In carrying out this examination, NMFS considered available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration included, but was not limited to, the following: (a) Persistence of the discrete population segment in an ecological setting unusual or unique for this taxon; (b) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (c) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (d) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Because precise circumstances are likely to vary considerably from case to case, it is not possible to describe prospectively all the classes of information that might bear on the biological and ecological importance of a discrete population segment.

In the case of Steller sea lions, the eastern and western population segments (including the Russian population), make up the entire range of the species. Extinction of either population segment would represent a substantial loss to the ecological and genetic diversity of the species as a whole. The importance of each of the population segments indicates that the significance criterion of the policy is satisfied.

Status: If a population segment is discrete and significant (i.e., it is a distinct population segment), its evaluation for endangered or threatened status will be based on the ESA definition of those terms and, primarily, a review of the factors enumerated in section 4(a) for determining whether a species is endangered or threatened. In the following section of this notice, the conservation status of each Steller sea lion population segment is evaluated and discussed within these contexts.

IV. Status Listing Procedures: Summary of Factors Affecting the Species

Species may be determined to be endangered or threatened due to one or more of five factors described in section 4(a)(1) of the ESA. These factors, as they apply to the western and eastern Steller sea lions population segments, are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Western Population Segment: Steller sea lions breed, pup, and seek rest and refuge on relatively remote islands and points of land along the Alaska coastline. There is no evidence that the availability of rookery or haulout space is a limiting factor for this species. As the number of animals in the western population segment continues to decline, some rookeries and haulouts have been abandoned and the availability of suitable terrestrial habitat is increasing. Terrestrial habitat destruction and modification do not appear to be significant issues for this population segment, or have a significant role in its population decline.

There are indications that Steller sea lion declines may be related to changes in the availability or quality of sea lion prey, as a result of environmental changes or human activities (Alverson, 1991; Calkins and Goodwin, 1988; Loughlin and Merrick, 1991; Merrick et al., 1987; NMFS, 1992; NMFS, 1995). This issue is discussed in more detail below in the section analyzing other factors affecting the species.

Eastern Population Segment: Modification or destruction of habitat, including both terrestrial and aquatic habitat, does not appear to be a significant factor affecting Steller sea lions in southeast Alaska. In Oregon, human disturbance of sea lions at Three Arch Rock and Oxford Reef was found to have a significant effect on the number of Steller sea lions using these sites (R. Brown, pers. comm.; NMFS, 1992). State regulations have been implemented, however, to restrict vessel traffic and reduce human disturbance in these areas.

In California, the reason for the decline of Steller sea lions is not known. Former rookery habitat has been abandoned (San Miguel Island), and some other rookeries (Año Nuevo Island, Farallon Islands) are at lower than historical abundance levels. The availability of suitable terrestrial habitat does not appear to be a factor in the sea lion decline in parts of California. A redistribution of Steller sea lions from disturbed to undisturbed habitats, however, has been reported in the Farallon Islands (D. Ainley in NMFS, 1992), which may be indicative of unreported disturbance limiting habitat use in other areas. Similarly, with respect to aquatic habitat, changes in the availability and quality of Steller sea lion prey resources due to natural cycles, fisheries, and toxic substances may be a factor in observed population trends in California.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Western and Eastern Population Segments: Steller sea lion pups were harvested commercially in the past, with significant levels of harvest occurring in eastern Aleutian Islands and the GOA during the 1960s and early 70s. Commercial harvest of Steller sea lions has not occurred since 1972. In the past, there have been reports of people shooting at Steller sea lions at rookeries and haulout sites and in the water near boats. Although illegal, shooting of sea lions may still continue, but the magnitude and significance of this mortality source is not known. While the commercial harvest and illegal shooting of Steller sea lions may have been significant factors in past declines, especially with respect to the western population segment, these harvests probably are not a major or substantial cause of recent population changes. In addition, in some cases, the animals may be disturbed as a result of recreational activities.

Intentional lethal takings of small numbers of Steller sea lions for scientific purposes have occurred in the past. Since the 1990 ESA listing, however, scientists have relied on non-lethal sampling techniques. Research often results in the temporary harassment and occasionally results in the injury of Steller sea lions. Prior to 1990, a small number of animals were taken from the wild for public display purposes, but no such removals have been authorized since listing. While occasionally the subject of observation and harassment, especially in some areas, Steller sea lions usually are not utilized for educational purposes in a manner that would have a significant negative impact on the animals. The utilization of Steller sea lions for scientific or educational purposes has not been a significant or contributing factor that has affected either population segment.

C. Disease or Predation

Western and Eastern Population Segments: Sharks and killer whales are

known to prey on Steller sea lions, primarily pups. The magnitude and significance of predator-related mortality, however, is not known. Natural mortality from predation is not currently considered to be a significant factor for either Steller sea lion population segment. Nonetheless, should the western population segment continue to decline and the amount of mortality resulting from natural predation by killer whales remain unchanged, natural mortality could exacerbate the decline, especially in some areas of the western population.

Studies to assess the significance of disease in the Steller sea lion population are ongoing. To date, researchers have not found any evidence that disease is a significant factor affecting either population of Steller sea lions. Various pathogens have been isolated from animals collected by researchers or carcasses found on the beach, but their significance to the overall population remains unclear. One area of ongoing research is determining the role, if any, of pathogens in the relatively high rate of abortions observed in GOA Steller sea lions.

D. The Inadequacy of Existing Regulatory Mechanisms

NMFS has the authority to implement regulations necessary to protect Steller sea lions under the ESA and the MMPA. Similarly, under the Magnuson-Stevens Act, NMFS has the authority to regulate fishing activities that may be affecting sea lions, directly or indirectly. However, whether existing regulatory mechanisms and protective regulations are adequate is difficult to evaluate because of the lack of a clear cause and effect relationship between human activities and the decline in the western population segment. Various regulations that have been implemented, or that have been suggested or proposed for implementation, are considered below.

Take prohibitions: Under the MMPA, it is unlawful for any person subject to the jurisdiction of the United States to take a marine mammal on the high seas or in waters or lands under U.S. jurisdiction. ''Take'' is defined as harass, hunt, capture, collect or kill or attempt to harass, hunt, capture, collect or kill any marine mammal. Certain exceptions from the prohibitions on taking are provided.

Similarly, under the ESA, certain statutory prohibitions apply once a species is listed as endangered. For example, under section 9 of the ESA, no person subject to the jurisdiction of the United States may take such a species within the U.S., the territorial sea of the U.S., or upon the high seas. ''Take'' is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. Certain exceptions are provided.

Often prohibitions similar to the section 9 prohibitions for endangered species are implemented by regulation with respect to species that are listed as threatened. Such action was not taken with respect to Steller sea lions when the species originally was listed as threatened in 1990, in part, because similar take prohibitions existed under the MMPA, and in part, because of the difficulty of authorizing incidental takings if such prohibitions had been implemented. However, at the time of the listing, or shortly subsequent to the listing, stringent protective measures, including the following, were implemented: Regulations prohibiting the discharge of firearms; designation of buffer zones; designation of critical habitat; and restrictions on fishing activities.

Regulations prohibiting the discharge of firearms: Regulations, issued in conjunction with the original listing of Steller sea lions as threatened, prohibit the discharge of firearms at or near these animals. Although intentional lethal taking of sea lions was already prohibited at the time of the listing, there had been reports of firearm use to deter sea lions from interfering with fishing operations.

In a separate action, NMFS recently proposed regulations and guidelines for deterring marine mammals as required under amended section 101(a)(4) of the MMPA (60 FR 22345, May 5, 1995). When these regulations and guidelines are finalized, the use of any firearms to deter marine mammals from interacting with fishing gear or catch will be prohibited. In addition, new section 118(a)(5) of the MMPA prohibits intentional lethal taking of any marine mammal during commercial fishing operations, except in defense of human life (60 FR 6036, Feb. 1, 1995).

The firearm prohibition, issued at the time of the original listing of Steller sea lions as threatened, is viewed, in general, as adequate; NMFS will continue to implement this protective measure for both the eastern and western population segments.

No approach in buffer areas: Regulations issued at the time Steller sea lions were originally listed as threatened, prohibited any vessel from approaching within three miles of specific Steller sea lion rookeries; likewise, approach on non-private land within one-half mile of these specific rookery sites was prohibited. A variety of exceptions was provided.

The purposes of the buffer areas are to restrict opportunities for individuals to shoot at sea lions and to facilitate enforcement of this restriction; to reduce interactions with sea lions, such as accidents or incidental takings, in areas where concentrations of these animals are expected to be high; to minimize disturbance and interference with sea lion behavior including foraging behavior, especially at pupping and breeding sites; and to avoid or minimize other human impacts and related adverse effects. To date, these regulations are generally viewed as effective. Based on the review of logbooks and overflights conducted by the U.S. Coast Guard, NMFS has found few instances of entry into these zones.

NMFS will continue to implement the existing regulatory buffer zones in the western area. At this time, NMFS is not proposing additional protective zones in the western or eastern area. NMFS regional research and management staff are reviewing the ongoing Steller sea lion program and looking at developing an action plan for future research and management directions. Consideration is being given to the development of an experiment for assessing the efficacy of closure zones.

Quotas on incidental takings: On April 30, 1994, the reauthorized and amended MMPA established a new regime to govern the take of marine mammals incidental to commercial fishing operations; the new regime replaces the interim exemption program established in 1988. Under the 1988 Interim Marine Mammal Exemption Program, up to 1,350 Steller sea lions were authorized to be taken annually incidental to commercial fisheries, and emergency regulatory actions were required if more than 1,350 animals were incidentally killed in any year. The new MMPA management regime replaced the previous quota system and focuses on reducing the incidental mortality and serious injury of marine mammals from strategic stocks, i.e., those population segments that are listed as endangered or threatened under the ESA, those stocks that are listed as depleted under the MMPA, and those stocks for which human-caused mortality exceeds the estimated potential biological removal (PBR) (the 1994 Amendments to the MMPA defined PBR as the maximum level of animals, not including natural mortalities, that can be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population). Under this new regime, NMFS is

required to permit the take of endangered and threatened marine mammals incidental to commercial fishing under section 101(a)(5)(E) of the MMPA, provided that (1) the incidental mortality and serious injury would have a negligible impact on the affected species or stock, (2) a recovery plan for that species or stock has been developed or is being developed, and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels are registered, and a take reduction plan has been developed or is being developed. A take reduction plan, once developed, is intended to assist in the recovery of the species and should include recommendations for regulatory or voluntary measures to reduce incidental mortality due to commercial fisheries.

To determine which stocks should be considered strategic and what level of take could be considered negligible, stock assessment reports were developed in 1995 for each Steller sea lion stock (population segment). These stock assessment reports compiled the available data on population size and trend, calculated a PBR level for each stock, and described, to the extent possible, the known sources of human mortality, including takes in commercial fisheries.

Based primarily on the low level of known incidental takes relative to the PBR level, NMFS determined negligible impact and issued an Incidental Take Statement (60 FR 45399, August 31, 1995) authorizing, under section 7(b)(4) of the ESA, takings from the western population segment of Steller sea lions incidental to commercial fisheries for a period of 2 years, and incidental takings from the eastern population segment for a period of 3 years. Due to the listing change and because many fisheries that interact with Steller sea lions in Alaska are not currently monitored by observers, there may be a need to reassess the negligible impact determination and reconsult under section 7.

NMFS is in the process of designing monitoring programs to be conducted in the unobserved fisheries in Alaska, including fisheries expected to incidentally take Steller sea lions. NMFS also will be preparing updated stock assessments in the coming year, reexamining the estimated mortality rates incidental to commercial fisheries and considering the next steps, if necessary, toward take reduction.

Subsistence harvests: Under section 10(e) of the ESA, prohibitions on the taking of threatened and endangered species normally do not apply to takings by Alaska Natives if such taking is primarily for subsistence purposes. To date, no action has been taken to regulate, or otherwise manage, the subsistence harvest of Steller sea lions by Alaska Native groups. The subsistence harvest may have some localized impact on survival, but its impact upon the survival of the overall populations is not considered significant. If subsistence takings materially and negatively affect the species in the future, Federal regulations or restrictions may be imposed only after a hearing and decision on the record.

Section 119 of the MMPA allows the Secretary of Commerce (Secretary) to enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence uses. In 1994, an interim Alaska Native Steller Sea Lion Commission (Commission) consisting of representatives from western Alaska communities that take Steller sea lions for subsistence needs was formed to improve communication among indigenous communities that use sea lions, to advocate for conservation of Steller sea lions, to advocate for protection of customary and traditional rights of indigenous peoples with regard to access and use of sea lions, and to serve as the focal point for development of co-management agreements with NMFS. Local hunter groups have also formed on St. Paul and St. George Islands to draft and implement guidelines to make their subsistence harvests more efficient. NMFS has met with these groups to discuss compliance with the guidelines, reduction of the strike/loss ratio, hunter education, Native/government information exchange and increased participation in the collection of biological samples. Through co-management agreements between NMFS and the Commission or local hunter groups, self-management and regulation of the subsistence harvest by Alaska Natives will be developed.

Critical habitat: Currently, designated critical habitat for Steller sea lions includes all rookeries, major haulouts, 3000-ft zones landward, seaward, and skyward of these sites, and aquatic foraging zones in Shelikof Strait, Seguam Pass and on the eastern Bering Sea Shelf. West of 150° W. long., critical habitat aquatic zones around rookeries and major haulouts extend to 20nm from the site boundary. In Oregon and California, critical habitat includes rookeries and 3000-ft zones landward, seaward, and skyward of these sites.

Critical habitat provides the public and other Federal agencies with notice of particular areas and features that are essential to the conservation of Steller sea lions. Consultation under section 7(a)(2) of the ESA is required for any agency action that may affect critical habitat. NMFS believes that the current designation of critical habitat is adequate and is not proposing to revise this designation at this time.

Restrictions on fishing activities: Although the relationship between commercial fisheries and the ability of Steller sea lions to obtain adequate food is not clear, a change in food availability, especially for juvenile Steller sea lions, is a leading hypothesis for the continuing decline in the western population segment. The GOA/BSAI management area is the geographic region where Steller sea lions have experienced the greatest population decline and is also an area where large commercial fisheries have developed. As a result, NMFS has implemented protective regulations to reduce the possible effects of certain commercial groundfish fisheries on Steller sea lions, especially the groundfish fisheries of the GOA and the BSAI.

Many of the Steller sea lion's preferred prey species are harvested by commercial fisheries in this region, and food availability to Steller sea lions may be affected by fishing. Because of concerns that commercial fisheries in these essential sea lion habitats could deplete prey abundance, NMFS amended the BSAI and GOA groundfish fishery management plans. Under the Magnuson-Stevens Act, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery to mitigate concentrated fishing effort on the southeastern Bering Sea shelf and in Seguam Pass; and (3) placed spatial allocation on the GOA pollock harvest to divert fishing effort away from sea lion foraging areas.

NMFS also seasonally expanded the 10 nm no-trawl zone around Ugamak Island in the eastern Aleutians to 20 nm (58 FR 13561, March 12, 1993). The expanded seasonal ''buffer'' at Ugamak Island better encompassed Steller sea lion winter habitats and juvenile foraging areas in the eastern Aleutian Islands region during the BSAI winter pollock fishery.

Consultations under section 7 of the ESA have been conducted on annual total allowable catch specifications for the GOA and BSAI fisheries, as well as all other changes in the fishery. Current regulations limiting the groundfish

fisheries in the GOA and BSAI were implemented under the Magnuson-Stevens Act. NMFS and the NPFMC have instituted changes so that Steller sea lion (and other marine mammal) concerns are now routinely considered in the fishery management decision making and quota specification process. The Team has recommended that NMFS evaluate the need for additional measures in order to enhance food availability near rookeries and haulouts in the western area. As stated earlier, NMFS is looking at developing a program to investigate the efficacy of current regulations and to address future research and management directions. No regulatory additions or changes are being proposed at this time.

Other regulatory mechanisms: The inadequacy of other regulatory mechanisms has been suggested as a factor in the decline or vulnerability of both Steller sea lion populations. Comments received on the status review notice included suggestions that additional regulations were needed to protect Steller sea lions, particularly at haulout and rookery sites, from the effects of Federal land management activities, including oil and gas exploration and development.

In most cases, other agencies, such as the Minerals Management Service and the U.S. Forest Service, regulate these types of activities. These agencies are expected to consult with NMFS under section 7 of the ESA to ensure that their actions are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify critical habitat. Comments received concerning the adequacy of current regulations issued by other agencies will be considered during the consultation process.

Conclusions regarding the inadequacy of existing regulatory mechanisms: A final determination with respect to whether existing regulatory mechanisms are adequate is difficult to make, given the lack of a clear cause of the decline. NMFS recognizes the importance of further examination of the adequacy and the benefits of existing regulations. However, in some cases, even after further study, it may be difficult or impossible to make definitive determinations about the adequacy of specific regulations because of the lack of understanding of all the mechanisms contributing to the decline or vulnerability of Steller sea lion populations.

Nevertheless, because of the separation of the species into distinct population segments and the status reclassification, various agency actions, likely to affect Steller sea lions, may be subject to reinitiation of consultation under section 7 of the ESA.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Other factors also may affect either or both populations of Steller sea lions. In particular, removals of Steller sea lions from the wild, resulting from direct and incidental takings, may be a contributing factor in past and continuing declines. Change in food availability is another factor that may be causing declines. Contaminants are also a concern. These other factors are discussed in more detail in the following sections.

Removals from the Western Population Segment: Steller sea lions interact with commercial fisheries, and, historically, many have been reported incidentally taken in fisheries in the GOA and BSAI. Estimates of the total number of Steller sea lions taken in commercial trawl fisheries in these waters from 1966 through 1988 have exceeded 20,000 animals (NMFS, 1995). Incidental catch appears to have been a contributing factor in the population decline in some areas of the Aleutian Islands and GOA during certain time periods.

Alaska Native subsistence hunters have been estimated to take about 350–500 Steller sea lions annually in recent years; virtually all of the subsistence harvest in Alaska occurs within the range of the western population segment (Wolfe & Mischler, 1993; 1994; 1995). These removals have some localized impact; should the western population segment continue to decline and the subsistence harvest continue at the same level, these removals may become significant to the survival of the overall populations.

Removals from the Eastern Population Segment: Accurate data on incidental takes of Steller sea lions in other fisheries in southeast Alaska, Oregon, and California are not available, but estimates from available sources are low. Alaska Native takes of Steller sea lions within the eastern population segment have been estimated at less than 10 animals annually (Wolfe & Mischler, 1993; 1994; 1995).

Food availability for the western population segment: Steller sea lions are opportunistic feeders, feeding primarily on schooling fish, such as walleye pollock, Atka mackerel, herring, and capelin. Declines in sea lion abundance may be related to changes in the availability of sea lion prey. Changes in the quantity or quality of available prey could have a chronic negative influence on the health and fitness of individual sea lions, resulting in reduced reproductive potential, increased susceptibility to disease, or death (Loughlin & Merrick, 1989). Calkins and Goodwin (1988) observed that Steller sea lions collected in the Kodiak Island area in 1985–86 were significantly smaller at age than animals collected from 1975–78, and hypothesized that nutritional stress was the cause. Juvenile sea lions, which are less adept foragers, may be most affected by changes in food availability. Demographic studies at Ugamak and Marmot Island rookeries suggest that juvenile survival has been greatly reduced over the last 20 years, and that this reduced juvenile survival may be the proximate cause of the population decline (NMFS, 1995). The role of food availability in the population decline remains unclear and is being investigated by researchers.

The BSAI and GOA commercial groundfish fisheries target important prey species of Steller sea lions, notably walleye pollock and Atka mackerel. Whether these fisheries actually deplete food resources of Steller sea lions is unclear. Analyses that have compared fishery harvests with changes in Steller sea lion abundance have been inconclusive, but the limitations of the available data may confound results (Loughlin & Merrick, 1989; Ferrero & Fritz, 1994).

One hypothesis is that where and how fisheries operate is significant to Steller sea lions, even if overall fishery removal levels are conservative of fish stocks. Fisheries that harvest large quantities of fish in relatively small geographic areas and short periods of time may deplete the local abundance of fishery resources. When such a fishery occurs in important Steller sea lion foraging habitat and targets, or has a significant bycatch of, Steller sea lion prey species (as the walleye pollock and Atka mackerel fisheries do), the fishery may make it more difficult for sea lions to obtain food. This is likely to be more important in the winter when alternate food resources are fewer and sea lion metabolic costs higher, and to be more significant to newly-weaned juveniles, which are less adept foragers. Based on this hypothesis, NMFS established no-groundfish-trawl zones around listed Steller sea lion rookeries in the GOA and BSAI (to reduce harvest in important foraging habitats), and created geographic fishery allocation areas in the GOA for walleye pollock (to disperse fishing effort).

The hypothesized change in prey availability to Steller sea lions could also be related to environmental change. Changes in the abundance of several species of fish, shellfish, birds, and

other marine mammals in the BSAI and GOA have been documented over the last 20 years. In particular, some important forage fish stocks, such as capelin and sand lance, appeared to have declined in both the BSAI and GOA during the 1970s and 1980s. Some of these observed changes in the ecosystem can be linked to human activities (e.g., fisheries, marine mammal harvests, hatcheries) whereas others appear to be related to natural phenomena (e.g., oceanic temperature changes).

Contaminants affecting both population segments: Concern has been expressed about the possible adverse effects of anthropogenic contaminants on the health and productivity of Steller sea lions, particularly in the western population segment and in California. Presently, the significance, if any, of toxic substances in Steller sea lion population declines is not known, and additional research is warranted.

V. Final Determination

NMFS has determined that the best available evidence indicates that Steller sea lions should be managed as two discrete population segments and that the threatened classification for the eastern segment and the endangered classification for the western segment are appropriate.

Available data on population trends indicate that the western population segment of Steller sea lions is in danger of extinction throughout all or a significant part of its range. This population had exhibited a precipitous, large population decline at the time that the Steller sea lion was listed as a threatened species in 1990 and has continued to decline since the listing. Therefore, the western population segment of Steller sea lions is reclassified as an endangered species under the ESA.

The eastern population segment was originally listed as a threatened species in 1990 when the entire species was listed. The eastern population segment has exhibited a stable population trend for the last 15 years; however, NMFS believes that the large decline within the overall U.S. population threatens the continued existence of the entire species. This is particularly true, since the underlying causes of the decline remain unknown, and thus, unpredictable. Therefore, despite the apparent stability of the eastern population segment, NMFS is maintaining a threatened listing for this portion of the geographic range.

These determinations allow for a differentiation between the two populations that acknowledges the different individual population segment trends, but does not lose sight of the overall trend for the species.

NMFS Policies on Endangered and Threatened Wildlife

On July 1, 1994, NMFS, jointly with the USFWS, published a series of new policies regarding listings under the ESA, including a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Identification of those activities that would constitute a violation of Section 9 of the ESA: Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered and threatened species. Under the ESA (section 9 and regulations), it is illegal to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect) or to attempt to take any endangered and most threatened species. Activities considered by the NMFS to constitute a ''take'' of an endangered or threatened Steller sea lion include:

1. Shooting at or near a Steller sea lion. An example would be an individual who shoots at a Steller sea lion to deter or distract it from taking fish off the individual's fishing gear; another example is shooting a Steller sea lion with a paint ball gun.

2. Collecting Steller sea lion parts. The ESA prohibits the collection of an endangered species or parts therefrom. Therefore, it would be illegal to collect parts from a dead Steller sea lion that has washed ashore.

3. Pursuing or harassing Steller sea lions. An example would be pursuing a Steller sea lion in an attempt to watch its behavior or to obtain a better view of it from a vessel. These illegal activities can be committed by guided marine life tour operators as well as individual recreational boaters. Persons who wish to view Steller sea lions would be required to avoid any actions that harass the Steller sea lion or actions that would constitute pursuit of Steller sea lions either in the water or on land. Trying to get the perfect photograph may result in actions that constitute harassment or pursuit of a Steller sea lion.

4. Approaching within 3 nm of a listed Steller sea lion rookery site. This includes, but is not limited to, transiting through the rookery site in a vessel, anchoring within any rookery site or fishing within any rookery site.

5. The take of Steller sea lions for the production of authentic native articles of handicrafts and clothing only. The ESA only provides for the non-wasteful taking of endangered species for subsistence purposes. If taken for this purpose, however, Native Alaskans are allowed to create authentic native articles of handicraft and clothing from non-edible byproducts.

This list is *not* exhaustive. It is provided to give the reader some examples of the types of activities that would be considered by the Agency as constituting a ''take'' of an endangered or threatened Steller sea lion under the ESA and regulations.

By operation of law, the section 9 prohibitions apply directly to the western stock of Steller sea lions. In this rule, pursuant to enforcement concerns, we are also extending these prohibitions to the eastern stock which remains threatened. Because the reclassified eastern and western population segments of Steller sea lions are physically indistinguishable and both segments are capable of traversing great distances, it will be exceedingly difficult to determine that a particular Steller belongs to a particular population. Extension of the section 9 prohibitions to all Steller sea lions would obviate this concern.

With regard to activities that may affect Steller sea lions or their habitat, and whose likelihood of violation of section 9 is uncertain, NMFS Alaska Regional Office (see **ADDRESSES**) should be contacted to assist in determining whether a particular activity constitutes a prohibited act under section 9.

Classification

Section 4(b)(1) of the ESA restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6th Cir. 1981), listing actions under the ESA are excluded from the normal requirements of the National Environmental Policy Act.

As noted in the Conference report on the 1982 amendments to the ESA (H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess 20. (1982)), economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12866, and the Regulatory Flexibility Act are not applicable to the listing process.

Dated: April 29, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

For the reasons set out in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart D, § 222.32 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.23, paragraph (a) is amended by adding the following material after ''Saimaa seal (*Phoca hispida saimensis*);'' to read as follows:

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) * * * Steller sea lion (*Eumetopias jubatus*), western population, which consists of Steller sea lions from breeding colonies located west of 144 °W. long.; * * *

* * * * *

3. Section 222.33 is added to subpart D to read as follows:

§ 222.33 Special prohibitions relating to endangered Steller sea lion protection.

General. The regulatory provisions set forth in part 227, which govern threatened Steller sea lions, shall also apply to the western population of Steller sea lions, which consists of all Steller sea lions from breeding colonies located west of 144 °W. long.

PART 227—THREATENED FISH AND WILDLIFE

4. The authority citation for part 227 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 227.12 also issued under 16 U.S.C. 1361 *et seq.*

5. In § 227.4, paragraph (e) is revised to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Steller (northern) sea lion (*Eumetopias jubatus*), eastern population, which consists of all Steller sea lions from breeding colonies located east of 144 °W. longitude.

* * * * *

6. In § 227.12, paragraph (a) introductory text is added, and the paragraph (a) heading, paragraphs (a)(4) and (b)(2) are revised to read as follows:

§ 227.12 Steller sea lion.

(a) *General prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) and the following regulatory provisions shall apply to the eastern population of Steller sea lions:

* * * * *

(4) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) * * *

(2) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

* * * * *

[FR Doc. 97–11668 Filed 4–30–97; 4:00 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101–7101–01; I.D. 042497B]

RIN 0648–AJ09

Fisheries Off West Coast and Western Pacific States; West Coast Salmon Fisheries; 1997 Management Measures

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

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1997 and for 1998 salmon seasons opening earlier than May 1, 1998. Specific fishery management measures vary by fishery and area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles (nm)) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are intended to allow a portion of the salmon runs to escape the ocean fisheries to provide for spawning escapement and inside fisheries.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1997, until the effective date of the 1998 management measures, as published in the **Federal Register**. Comments must be received by June 4, 1997.

ADDRESSES: Comments on the management measures and related environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., Seattle, WA 98115–0070; or William Hogarth, Acting Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the EA and other documents cited in this notice are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William Robinson at 206–526–6140, or Rodney McInnis at 562–980–4030.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the exclusive economic zone off Washington, Oregon, and California (the fishery management area (FMA)) are managed under a ''framework'' fishery management plan—the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP) was developed, approved and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.