



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

February 13, 2003

MEMORANDUM FOR: THE RECORD

FROM:

For James W. Balsiger
Administrator, Alaska Region *Arnold J. Berg*

SUBJECT:

Corrections to the Final Rule Implementing Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA) Groundfish Fisheries -CATEGORICAL EXCLUSION

The final rule implementing Steller sea lion protection measures was published in the Federal Register on January 2, 2003 (68 FR 204). Corrections are needed to the regulatory text and tables to implement pollock, Pacific cod, and Atka mackerel fishing restrictions around certain haulouts and rookeries and to ensure consistency with the American Fisheries Act (AFA) regulations implementing Amendments 61/61/13/8 (67 FR 79692, December 30, 2002). The corrections are considered noncontroversial. This action is necessary to minimize confusion and ensure effective implementation of the Steller sea lion protection measures.

After reviewing those portions of the action that provide (1) renumbering of paragraphs, (2) corrections to cross-references, (3) alignment of text, and (4) corrections to OMB control number references, in relation to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, we have concluded that those portions would not have a significant effect, individually or cumulatively, on the human environment. In addition, a supplemental environmental impact statement (SEIS) was prepared November 2001, for the final rule implementing the Steller sea lion protection measures (68 FR 204, January 2, 2003). The scope of the SEIS includes the potential impacts of those portions of the action that correct tables 4 through 6 which specify fishing restrictions. Based on the nature of the action and the previous environmental analysis, we have concluded that the proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216-6.



BACKGROUND

This action is a correction of the regulations implementing the Steller sea lion protection measures. These corrections are needed to ensure the Steller sea lion protection measures are fully implemented. The following corrections are being made with this action.

1. OMB Control No. Two corrections are needed in the OMB control number references located in the table at 50 CFR 902.1(b). This action corrects the number assigned to § 679.20(a)(8)(iii) to read "-0206". OMB control number "-0269" is assigned to § 679.5(n)(2)(iii), which is added to the table with this action.

2. AFA Rule Consistency. A number of corrections to the final rule for the Steller sea lion protection measures are needed for consistency with the final rule for Amendments 61/61/13/8 for the American Fisheries Act (AFA) (67 FR 79692, December 30, 2002, effective January 29, 2003). The final rule for the AFA revised text in § 679.20(a)(5)(i)(A) and (a)(5)(ii)(B), which included text in the Steller sea lion protection measures final rule that described the seasonal apportionment of pollock in the BSAI and GOA. This correction redesignates the paragraphs in the Steller sea lion protection measures final rule to ensure that seasonal allocations for pollock appear in the regulations. Cross-references to these redesignated paragraphs in § 679.20(b)(2) and § 679.22(a)(7) also are corrected.

The AFA final rule added text for the GOA pollock and Pacific cod fisheries allocations that mirror the text in the Steller sea lion protection measures final rule, but are codified under different paragraph numbers. The Steller sea lion protection measures final rule is corrected to remove the instructions to revise paragraphs § 679.20(a)(6)(ii) and (iii) because these regulations are included in the AFA final rule under § 679.20(a)(6)(i) and (ii). Cross-references to these paragraphs at § 679.20(b)(2)(i) and (ii) are also corrected.

3. Pacific cod nontrawl season. Sections 679.23(d) and 679.23(i) in the Steller sea lion protection measures final rule contain typographical errors regarding the Pacific cod nontrawl seasons. The text in paragraph (d)(3)(i)(A) that follows § 679.23(i) is removed and placed in § 679.23(d), in between § 679.23(d)(2)(iv) and the following paragraph (B). This will restore the proper paragraph numbering and placement of this requirement in the regulatory text.

4. Pollock fishery restriction in Steller sea lion protection areas: In Table 4 of 50 CFR part 679, the closure to directed fishing for pollock is corrected for the Uliaga and Kagamil haulouts. Critical habitat is defined as waters within 20 nautical miles (nm) of selected rookeries and haulouts (50 CFR 223.202). Critical habitat for these haulouts include waters located west of 170° W longitude in the Aleutian Islands subarea. Directed fishing for pollock in critical habitat in the Aleutian Islands subarea is prohibited. Even though these sites are located in the Bering Sea subarea, critical habitat associated with these sites is located in the Aleutian Islands subarea. Therefore, directed fishing for pollock is prohibited in the portion of critical habitat around the Kagamil and Uliaga haulouts that lies west of 170° W longitude. Within the Bering Sea subarea,

closures for these sites are 10 nm. The no-fishing zones for each of these sites in Table 4 are corrected with this action to show the 20 nm and 10 nm closures, and footnote 3 is revised to explain the closures.

5. Pacific cod fisheries restrictions in Steller sea lion protection areas: In Table 5 of 50 CFR part 679, the closures around Uliaga, Kagamil, and Chuginadak are corrected for the Pacific cod pot and hook-and-line gear fisheries. The pot and hook-and-line gear fisheries closures should apply to all critical habitat located west of 170° W longitude and east of 173° W longitude. Critical habitat for these three sites includes waters west of 170° W longitude, even though the sites are located east of 170° W longitude. The no-fishing zone descriptions in columns 8 and 9 of Table 5 are corrected to 20 nm for the pot and hook-and-line fisheries for Uliaga and Kagamil.

The Steller sea lion protection measures should prohibit directed fishing for Pacific cod using hook-and-line gear within 10 nm of certain haulouts in the GOA, including Chuginadak. The hook-and-line fishery closure for Chuginadak is revised in column 8 as "20,10" so that the 20 nm critical habitat closure west of 170° W longitude and the 10 nm closure east of 170° W longitude are shown. Footnote 14 to Table 5 is revised to correct the closures for Chuginadak, Uliaga, and Kagamil.

Table 5 of this part also contained errors in columns 8 and 9 for Marmot Island. Pacific cod hook-and-line and pot gear fisheries should be prohibited 0-10 nm from Marmot Island, as required by the Steller sea lion protection measures. This correction adds 10 nm closures in columns 8 and 9 for Marmot Island, which were inadvertently omitted.

The closure around Tanaga I./Bumpy Pt. for the Aleutian Islands subarea Pacific cod trawl fishery in Table 5 is also corrected. As specified in the Steller sea lion protection measures, directed fishing for Pacific cod using trawl gear is prohibited in the Harvest Limit Area (HLA) during the Atka mackerel HLA directed fishery (§679.22(a)(8)(iv)). A portion of the 20 nm critical habitat area surrounding Tanaga I./Bumpy Pt. extends west of 178° W longitude, and this portion of water, by definition, is part of the HLA (§679.2). Therefore, the portion of critical habitat for Tanaga I./Bumpy Pt. that lies west of 178° W longitude should be closed to directed fishing for Pacific cod with trawl gear during the Atka mackerel HLA directed fishery. A footnote is added to Tanaga I./Bumpy Pt. specifying the closure around this site. Because haulout sites located east of 178° W longitude are closed to 3 nm to directed fishing for Pacific cod with trawl gear, the no-fishing zone in column 7 of Table 5 is corrected to show 3 nm and 20 nm closures that apply to this site.

6. Atka mackerel Steller sea lion protection areas: In Table 6 of 50 CFR part 679, footnote 4 was inadvertently omitted from the site Tanaga I./Bumpy Pt. in the final rule. The footnote is necessary to explain the closure around this site and is added to the site name with this action. Footnote 4 is also revised to further explain that waters within 20 nm of Tanaga I./Bumpy Pt. and west of 178° W longitude are part of the HLA, as defined in §679.2.

Also in Table 6, footnote 7 is corrected to further explain the 10 nm and 20 nm closures around Gramp Rock. The 20 nm closure for Gramp Rock applies to waters located east of 178° W longitude, and the 10 nm closure for Gramp Rock applies to waters located west of 178° W longitude, as required by the Steller sea lion protection measures. Gramp Rock is closed to directed fishing for Atka mackerel using trawl gear in waters within 20 nm and west of 178° W longitude after the closure of the Atka mackerel HLA directed fishery.

PREVIOUS NEPA ANALYSIS

In the SEIS, the description of the preferred alternative (Alternative 4) included all of the closures that are implemented by correcting the regulations (68 FR 204, January 2, 2003) with this action. Therefore, the potential impact of this action has been analyzed in the SEIS, in accordance with the National Environmental Policy Act (NEPA).

CONCLUSIONS

The salient factors contributing to the conclusion that a categorical exclusion is appropriate for this action are:

1. The impact of corrections to the fishing restrictions specified in tables 4 through 6 were previously analyzed in a NEPA analysis.
2. The corrections to paragraph numbering, cross-references, alignment of text, and OMB control number references are an administrative procedure which has no effect on the human environment.

CC: GCAK
NEPA Coordinator

Mnbrown: 1/15/03, 1/29/03

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