Instructions for EPA Form 1900–68

When a PO or CO identifies costs in a voucher that are to be suspended or disallowed, the Form 1900–68 is used to identify those costs, the associated reasons and to communicate the action to all necessary parties. Examples of costs that a PO might suspend without CO involvement are: math errors, incorrect rates, and a lack of available funding. Examples of costs that CO involvement would be necessary to suspend or disallow costs include lack of authorization to incur costs, unnecessary costs incurred, and excessive costs. Section A, Cost Suspension, may be filled out by either the CO or PO. The PO and/or CO must fill out the Form 1900–68 explaining the suspended amount, sign and date the Form and send it to the contractor. The contractor must fill out the acknowledgement of receipt on the applicable area on Form 1900–68 and return a copy of it to either the PO or CO who made the suspension. A copy of the Form 1900–68 would go to RTP Finance with the Approval Forms package. Copies of the Form 1900–68 would be filed by PO and/or CO and a copy sent to the applicable Cost Advisory Office for use in interim and final audits.

The Form 1900–68 states that the contractor has 60 days to respond to the suspension, or the costs will be considered disallowed and those costs should be transferred to an unallowable account in the contractor's accounting records. If the contractor wishes to respond to the suspension, it must as a minimum furnish documentation specified on the Form 1900–68 for the costs to be considered allowable. The contractor will then resubmit this documentation to the PO and CO for review. Either the CO or PO who originally suspended the costs will consider the documentation and, if it is adequate, they will fill out a revised Form 1900–68 Block B. (Removal of Suspension) for some or all of the costs suspended. Copies of this revised Form 1900–68 would go to the contractor, CO and PO, RTP, FMC, and Cost Advisory Office.

The contractor may rebill suspended costs after receiving the Removal of Suspension using a separate invoice and attach the Form 1900–68 Removal of Suspension notice to the invoice. The contractor must then resubmit this bill for payment in accordance with contract invoicing requirements.

If the contractor prepares supporting documentation for suspended costs that the PO deems unacceptable, the PO will notify the CO of this and ask for a final determination on the allowability of the costs. If the CO agrees with the PO, a revised Form 1900–68 with Block C (Disallowance of Costs) should be completed and sent to the contractor instructing the contractor to eliminate such costs on future invoices and to move such costs to unallowable accounts on their accounting records. The contractor must acknowledge receipt of the disallowance notice by signing and returning the notice to the CO. Where the CO processed the suspension, the CO will inform the PO and disallow the cost. Copies of the revised Form 1900–68 should be sent to RTP Finance, the contract file, and the applicable Cost Advisory Office.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 950919232–5232–01; I.D. 041995B]

RIN 0648–XX27

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: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to reclassify the Steller sea lion, *Eumetopias jubatus.* This species currently is listed under the Endangered Species Act of 1973 (ESA) as threatened throughout its range, which extends from California and associated waters to Alaska, including the Gulf of Alaska and Aleutian Islands, and then 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 now proposes to re-classify Steller sea lions as two distinct population segments under the ESA. NMFS proposes to classify the Steller sea lion population segment west of 144° W. long. (a line near Cape Suckling, AK) as endangered, and to maintain the ESA threatened listing for the remainder of the U.S. population. NMFS is requesting public comments on this proposed action.

DATES: Comments and information must be received by January 2, 1996.

ADDRESSES: Comments and information should be addressed to Chief, Marine Mammal Division, Office of Protected Resources (F/PR), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Steller sea lion status review document, the Steller Sea Lion Recovery Team (Recovery Team) meeting summary and recommendations regarding reclassification, and a Population Viability Analyses of Steller sea lions in Alaska may be obtained from Susan Mello, Protected Resources Management Division, Alaska Regional Office, NMFS, P.O.Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Susan Mello, 907–586–7235 or Michael Payne, F/PR, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION:

I. Background

NMFS determined that the Steller sea lion was a threatened species under the ESA (55 FR 49294, November 26, 1990; see also, 55 FR 50005, December 4, 1990). The species was listed throughout its range because of a precipitous decline in abundance. This decline was concentrated primarily in areas near the Gulf of Alaska and Aleutian Islands.

The final rule imposed protective regulations to reduce direct causes of Steller sea lion 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.

As a result of ESA section 7 consultations on the effects of the North Pacific federally-managed groundfish fisheries, NMFS implemented additional protective measures in 1991, 1992, and 1993 to reduce the effects of certain commercial groundfish 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) (1994)). NMFS has also published a Steller Sea Lion Recovery Plan (Recovery Plan) (58 FR 3008, January 7, 1993), and has designated critical habitat for the species (58 FR 45269, August 27, 1993). NMFS and other agencies are implementing the Recovery Plan.

Since 1990, NMFS and the Alaska Department of Fish and Game (ADFG) have conducted monitoring surveys that indicate that the decline of Steller sea

lions has continued throughout most of Alaska. Because of this continued decline, on November 1, 1993, NMFS initiated a formal population status review under the ESA to determine whether a change in its listing status as a threatened species is warranted (58 FR 58318, November 1, 1993).

II. Comments and Responses on Status Review Notice

NMFS received sixteen comments in response to the status review notice. Comments pertinent to the proposed listings and regulations are discussed below.

Separate Population Listings

Some comments noted that Steller sea lions have not declined in some portions of the species' geographic range, and suggested that NMFS consider treating the species as two separate populations for the purposes of listing under the ESA.

Under the ESA, only a ''species'' may be listed as threatened or endangered. The term ''species'' includes any subspecies of fish or wildlife and any distinct population segment of any species of fish or wildlife that interbreeds when mature. At the time Steller sea lions were listed as threatened, NMFS determined that there was insufficient information available to consider animals in different geographic regions as separate populations. However, additional data collected, particularly on population genetics, now indicate that Steller sea lions should be listed as two distinct population segments under the ESA. Supporting data and information for this proposed determination are detailed below.

Listing Classification

The majority of the comments did not express a preference for either a threatened or endangered listing status for Steller sea lions. Some comments indicated the belief that there is sufficient information to support a change in listing status to endangered. Other comments stated that the current listing of the species as threatened provides NMFS sufficient regulatory authority to protect Steller sea lions and, therefore, a change in listing status to endangered is not necessary. Some of these same commenters also suggested that an endangered listing should not be considered at this time, since it would result in greater economic effects to fishing communities and the fishing industry. Some commenters believe that no change in listing status should be considered while the reasons for the decline remain unclear.

The ESA is explicit that listing and reclassification decisions are to be made solely on the basis of the best scientific and commercial information available regarding the species' population status (section 4(b)(1)(A)). Economic effects are not to be considered in making a listing determination for a species under the ESA. Likewise, the lack of knowledge regarding causes of the Steller sea lion decline does not affect a species' status. Each of the five factors described in section 4(a)(1) of the ESA that must be considered in making a listing status determination are discussed below. The adequacy of existing regulatory mechanisms is one of these factors.

Population Viability Analysis

Some commenters expressed concern regarding the weight that would be given to the results of the Steller sea lion Population Viability Analysis (PVA) (PVA at Merrick and York, 1994). They noted the 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. One commenter indicated that the PVA should be peer reviewed by independent experts.

The PVA provides an estimate of extinction risk if current population trends continue. NMFS believes that the PVA provides the best estimate of extinction risk possible with existing data and scientific methods, and has submitted the PVA for review by outside, independent experts. However, 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 objective population trend data and the scientific opinion of experts, both within and outside NMFS.

Protective Measures

Several commenters raised issues relative to the protective measures that have been implemented to aid recovery of Steller sea lions. Some commenters felt that additional regulations were needed to better protect Steller sea lions from the effects of commercial fisheries, and oil and gas exploration and development. Other commenters questioned the rationale for existing protections, particularly fishery closure areas.

NMFS has implemented various protective measures for Steller sea lions under the ESA and the Magnuson Fishery Conservation and Management Act (Magnuson 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.

NMFS is reevaluating existing management measures for Steller sea lions. NMFS expects to consider regulatory changes that may be needed to ensure that regulations provide the greatest potential to benefit Steller sea lions without unnecessarily restricting human activities. However, NMFS will involve state and Federal agencies, the North Pacific Fishery Management Council, Alaska Native organizations, fishing and environmental groups, and other affected members of the public in the early stages of the decision-making process for any changes in management regulations. NMFS is reinitiating consultation under section 7 of the ESA on Federally-managed groundfish fisheries off Alaska to consider new information and to evaluate whether existing protective regulations are adequate to ensure that agency actions are not likely to jeopardize the continued existence of the species. NMFS has not reached any definitive conclusions concerning the adequacy of existing regulatory mechanisms. This issue is discussed in more detail below.

Research Program

Several commenters recommended an expansion of existing research efforts, and offered specific recommendations for areas of research.

The Recovery Plan research program is a federally-funded effort, implemented jointly by NMFS and ADFG. Research priorities are defined in the Recovery Plan, and are limited by available funds. As described below, the Recovery Team has begun the process of synthesizing research program accomplishments with the intention of revising the Recovery Plan, as needed.

III. Recommendations of the Steller Sea Lion Recovery Team

The Recovery Team was appointed by NMFS in 1990 to draft a recovery plan for the species and to serve as an advisory body to NMFS on Steller sea lion research and management issues. On November 29–30, 1994, NMFS convened the Recovery Team specifically 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

(AA), the Recovery Team made the following recommendations to NMFS:

(1) *Listing Status under the ESA:* The Recovery Team recommended that NMFS list the Steller sea lion as two separate population segments, split to the east and west of 144° W long. (a line near Cape Suckling, AK). The Recovery Team recommended that the western population segment be listed as endangered and that the eastern population segment be listed as threatened.

(2) *Commercial fisheries:* A change in food availability is the leading hypothesis for the cause of the Steller sea lion decline. Reduced juvenile recruitment appears to be the proximate cause of the decline and juvenile Steller sea lions appear to feed primarily in areas near rookeries and haulouts. The Recovery Team recommended that NMFS evaluate the need to close or otherwise regulate any or all nearshore fisheries around Steller sea lion rookeries and major haulouts west of 144° W long. in order to enhance food availability.

(3) *Research:* The Recovery Team recommended that the individual research projects being undertaken under the Recovery Plan be peer reviewed to assess the need for changes in research direction and priorities. In-depth research program reviews will be accomplished over the next few years and will include review by outside experts, as necessary. The four major components of the research program to be individually evaluated are: (1) Population monitoring (Peer review of the population monitoring program was completed in 1992 (Rosenberg 1992)); (2) satellite telemetry studies; (3) physiology/health studies; and (4) food habits and foraging ecology studies. Results of this peer review process are expected to be used to revise the Recovery Plan.

The Recovery Team also recommended that NMFS direct additional effort, and seek additional funding, to better assess Steller sea lion prey resources in the North Pacific.

(4) *Subsistence harvest:* The Recovery Team recommended that NMFS work with the newly formed Alaska Native Steller Sea Lion Commission toward the goals of developing self-management and monitoring of subsistence harvests, establishing biologically acceptable harvest levels, and reducing struck and lost rates.

The Recovery Team recommendations relative to reclassification of the species have been considered in this proposed determination. Management recommendations also are being considered and will be evaluated in more detail during the review of existing regulations and through the consultation process.

IV. Proposed Population Determinations

As described above, only a ''species'' may be listed as threatened or endangered under the ESA, and this term is defined 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 December 21, 1994, NMFS and the U.S. Fish and Wildlife Service proposed a policy to clarify their interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying species under the ESA (59 FR 65884, December 21, 1994). Although this is only a proposed policy at this time, it represents the best available guidance for interpreting the term ''distinct population segment.'' NMFS proposes to use the criteria announced in the December 21, 1994 proposed policy to assess the presence of distinct populations of Steller sea lions.

The proposed policy outlines three elements that should be considered in any decision regarding the status of a possible distinct population segment: Discreteness of the population segment in relation to the remainder of the species to which it belongs; the significance of the population segment to the species to which it belongs; and the population segment's conservation status in relation to the ESA's standards for listing. The first two elements are discussed below, and conservation status is discussed separately for each proposed population segment in the following section and within the context of the five factors that are evaluated below.

(1) *Discreteness:* Under the proposed policy a population segment of a vertebrate species may be considered discrete if it is either 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); or delimited by international governmental boundaries 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 populations of Steller sea lions exist. Bickham et al. (in press) collected genetic samples from 224 Steller sea lion pups on rookeries in Russia, the Aleutian Islands, the western and central Gulf of Alaska, 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. 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., and one was unique to Año Nuevo Island.

Tagging and branding studies provide 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 and 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 populations.

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.

The above information supports the conclusion that the western and eastern population segments of Steller sea lions are discrete.

(2) *Significance:* The proposed policy recommends that if population segments are determined to be discrete, then the biological and ecological significance of a population segment should be considered in light of the guidance in S. Rep. No. 151, 96th Cong., 1st Sess. (1979) that the authority to list distinct population segments be used sparingly and only when the biological evidence indicates that such action is warranted. The underlying question of significance depends on the relationship of a proposed population segment to the species as a whole.

In the case of Steller sea lions, the two population segments under consideration 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 proposed policy would be satisfied.

V. Current Status

Status of the Western Steller Sea Lion Population Segment

Population monitoring data: The western Steller sea lion population segment had suffered substantial declines prior to the 1990 ESA listing. Loughlin et al. (1992) estimate a 70 percent decrease in the number of adult and juvenile sea lions in this area between the 1960's and 1989. Since the 1990 listing, Steller sea lion trend counts for the western population segment have shown a continued decline. The number of adult and juvenile animals counted at trend sites during aerial surveys has dropped from 30,525 in 1990 to 24,104 in 1994 (a 21 percent decrease) (NMFS, 1995).

Regionally, decline rates differ: The western and eastern Gulf of Alaska (a 38 percent and a 36 percent decline, respectively) and the central and western Aleutian Islands (a 28 percent and a 13 percent decline, respectively) have shown the largest declines in adult/juvenile numbers since 1990. Counts of the eastern Aleutian Islands area and western Gulf of Alaska area have been relatively stable since 1990, while the Bering Sea region has shown an increase in adult/juvenile counts since 1990. However, the eastern Aleutian Islands and Bering Sea regions declined substantially prior to 1990, and populations there remain only a fraction of what they were 20 years ago.

Pup production has also decreased since the 1990 listing. Overall, a decline of about 28 percent has been observed between pup counts made in 1989–90 as compared to 1993–94 (excluding the western Aleutian Islands and Bering Sea where comparative counts are not available). Regional differences in the rate of change in pup production also are apparent. Pup production in the central Gulf of Alaska declined by 49 percent between 1989–90 and 1993–94. The central and eastern Aleutian Islands also had large decreases in pup production (a 19 percent and a 16 percent decline, respectively), while pup production in the eastern and western Gulf of Alaska was relatively stable over the time period.

Population Viability Analysis: Steller sea lion abundance trends within the decline area were modeled to provide an estimate of the likelihood of extinction given the available population data (Merrick and York, 1994). Two models were developed based on a stochastic model of exponential growth that required only count data and count variance to predict future trends (after Dennis et al., 1991), and using both the 1985–94 and 1989–94 population trends. 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 (<500 females) within 100 years from the present, if either the 1985–94 or 1989–94 trend continues into the future. The Kenai-Kiska regional model predicted a probability of extinction within 100 years of 100 percent from the 1985–94 trend data, and a probability of extinction within 100 years of 65 percent if the 1989–94 trend data are used.

The rookery model predicted longer times to extinction. Predicted probabilities of extinction within 100 years were 100 percent using the 1985–94 trend, and 10 percent using the 1989–94 trend data. Modeling results indicated that, if either trend persists, the next 20 years would be crucial to the survival of the western Alaska population. Under all modelling scenarios during the next 20 years, populations on individual rookeries are predicted to be reduced to low levels (mean size <100 adult females).

Criteria and considerations for endangered classification: The ESA does not provide objective criteria or specific guidance for determining when a population should be listed as endangered or threatened. The ESA simply defines an ''endangered species'' as one that is in danger of extinction and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future. Other guidance and criteria for assessing population endangerment can be gleaned from scientific literature. This is discussed below in relation to the current status of the western population segment of Steller sea lions.

The Recovery Team recommended specific evaluation criteria for Steller sea lions, and considered the current abundance in the Kenai Peninsula to Kiska Island (trendsite) area in relation to a pre-decline benchmark population size, as well as the rate of decline in adult/juvenile animals counted within the trendsite area, the rate of decline in pup production in the trendsite area, and population trends in other geographic regions (NMFS, 1992). Application of the Recovery Team's criteria at this time would result in a determination that the western population segment should be listed as endangered. Indeed, the Recovery Team specifically recommended to NMFS that the western population segment be listed as endangered (Lowry, 1994).

Although a precise definition of ''endangered'' does not exist, a population that is not endangered is one that is likely to persist into the foreseeable future. Thus, the question of defining endangerment is one of determining the threshold probability of extinction that is too high to be acceptable to society (Goodman, 1994). Defining the acceptable probability of persistence and the appropriate time frame of reference that defines a minimum viable population (MVP) is a subjective decision that has been much discussed in the conservation biology literature. ''Acceptable'' persistence values in the scientific literature for an MVP range from a ''greater than'' 80 to 90 percent probability of persistence over 10 generations, to a ''greater than or equal to'' 50, 90, 95, and 99 percent probability of persistence over 100 years or a ''greater than or equal to'' 99 percent likelihood of persistence over

1000 years (Schaffer, 1981, 1987; Belovsky, 1987; Soule, 1987; Mace and Lande, 1991; Mace et al., 1993; Thompson, 1991). Thompson (1991) notes that although there are no clear theoretical grounds for a single choice of persistence probability and time frame reference, the relatively frequent use of a 95 percent probability of persistence over 100 years makes this a reasonable standard for an MVP, i.e., an unendangered population. Considering the converse, an endangered population may be defined as one with a greater than 5 percent chance of extinction over the next 100 years. Evaluating the western Steller sea lion population PVA results (at Merrick and York, 1994) in light of this ''standard'' would lead to a determination that the western population of Steller sea lions is endangered.

Various ''rules of thumb'' also have been proposed for the minimum population size needed to ''ensure'' population persistence over time; however, most authors caution against using such ''magic numbers'' offhandedly. For example, the 1994 estimate of adult/juvenile Steller sea lions within the western population segment of 33,600 (NMFS, 1995) is well above most of the MVP ''rules of thumb'' commonly cited (Soule, 1987; Belovsky, 1987; Thomas, 1990). A ''rule of thumb'' approach is inadequate, however, for evaluating the status of Steller sea lions under the ESA. A ''rule of thumb'' assessment may be useful in assessing long-term viability of stable populations, but the severe, continuous decline in the western Steller sea lion population trend would be overlooked by such an approach. As noted by the Recovery Team in their criteria, the rate of population decline, as well as the magnitude and spatial extent of the decline, are critical factors in determining endangerment for this population.

Mace and Lande (1991) and Mace et al. (1993) outline criteria for classifying species considered by the International Union for the Conservation of Nature (IUCN), which incorporate various types of population data and analyses, e.g., population size, geographic range, population decline rate, probability of persistence within a given time frame from PVA. Consideration of all available data on a population allows a more robust estimate of population status than ''rule of thumb'' or PVA approaches alone. It should be emphasized that in both IUCN proposals probabilistic criteria are considered in conjunction with other data, thus, the most conservative classification derived by considering all available data/analyses would be chosen.

Conclusions concerning the western population: An analysis of the conservation status of the western population segment of the Steller sea lion in relationship to the standards for threatened and endangered status indicates that this population segment would satisfy the third criterion of the proposed population policy. In addition, the available data and information concerning the status of this stock indicates that the western population should be proposed for endangered status under the ESA.

The western population is proposed to consist of Steller sea lions from breeding colonies located west of 144 °W. long.

Status of the Eastern Steller Sea Lion Population Segment

Population monitoring data: The 1990 ESA listing of Steller sea lions resulted primarily from the declines observed in the western population area; in the eastern population, a decline has been noted only in the California part of the range. Since the 1990 listing, trend counts of the eastern population segment show about a 17 percent increase overall in adult/juvenile numbers. Similar to the western population, regional differences in trends within the eastern population are evident.

California experienced a large decline in Steller sea lion numbers prior to 1980; NMFS (1995) estimated a greater than 50 percent decline between about 1950 and 1980. Some of the available data indicate that a northward shift in the Steller sea lion range may be occurring, which may exacerbate the decline at southern rookeries. Steller sea lion counts in California have been relatively stable since 1980 (1980 count was 982) although counts declined 19 percent from 1990–94 (from 1,123 animals to 915) (NMFS, 1995). The reasons for the historical decline in Steller sea lion total abundance and the current decline at southern locations in California is not known. Causal factors under investigation include changes in prey base, possible effects of anthropogenic contaminants and disease, disturbance, and competition with other pinniped populations that are increasing in abundance in California, e.g., California sea lions, elephant seals, northern fur seals.

Steller sea lion adult/juvenile counts at Oregon trend sites show a relatively large increase from 1990–94 (from 2,005 to 2,696) but this may be, at least partially, due to improved counting techniques (NMFS, 1995). Steller sea lion adult/juvenile counts in Southeast Alaska increased 15 percent from 1990 to 1994 (from 7,629 to 9,005), and pup counts increased by about 10 percent (from a mean of 2,568 in 1989–90 to a mean of 3,701 in 1993–94).

The British Columbia portion of the eastern population has also apparently been increasing slowly since the 1970s. Reports from aerial surveys conducted by the Canadian Department of Fisheries and Oceans indicate that adult/juvenile counts at rookeries and haulouts in British Columbia increased about 10 percent between 1992 and 1994 (from 7,376 to 8,091) (Olesiuk, pers. comm.).

Criteria and considerations for threatened status and conclusions concerning the eastern population: The overall trend of the eastern population segment of Steller sea lions since 1980 has been stable to increasing although significant declines in the number of Steller sea lions occurring within California prior to 1980 have been documented. Population modeling of the number of sea lions at the rookeries to assess the viability of the eastern population segment has not been specifically conducted by NMFS. Since this population's trend has been stable to increasing, modelling, such as that conducted for the western population, would be expected to predict persistence of this population segment for the foreseeable future (NMFS, 1995).

The estimated size of the eastern population of Steller sea lions within U.S. boundaries in 1994 was 18,600 animals. About 10,000 more animals of this population are estimated to occur within British Columbia. The British Columbia estimate was derived by adjusting Olesiuk's 1994 adult/juvenile count to account for animals at sea, using the methods of Loughlin et al. (1992).

Comparison of this population size with the typical range of most ''rules of thumb'' for minimum viable population size (from 1000 to 10,000 individuals (Thompson, 1991)) provides an additional indication that this population is not vulnerable to extinction in the foreseeable future. Similarly, this population segment, when considered alone, would not meet any of the draft IUCN vulnerability criteria discussed in Mace and Lande (1991) and Mace et al. (1993).

Evaluating the population status of the eastern population segment without a consideration of its place in the overall species population, however, may be inappropriate. Prior to the decline, the proportion of the U.S. population of Steller sea lions that resided within the eastern population

area was less than 10 percent (NMFS, 1995). Because of the western population's decline, the eastern population's numerical significance has increased. NMFS (1995) estimates that the total U.S. population of Steller sea lions has declined by 73 percent between the 1960s and 1994 (NMFS, 1995). The overall trend for the entire species is a continuing decline. Also, between 1991 and 1994 pup numbers decreased in all regions of Alaska. There was a 20.8 percent decrease in the number of pups born in the area from southeastern Alaska to central Alaska. These declines reverse the apparent stability in pup numbers in southeastern Alaska.

Thus, although for listing purposes the western and eastern population segments may be considered discrete, the substantial population decline that has occurred in the eastern Gulf of Alaska through the Aleutian Islands represents a threat to the continued existence of the entire species, including the eastern population. Therefore, the vulnerability of the eastern population remains a serious concern as long as the cause of the decline of the western population remains undetermined. These populations, while separate, are not isolated, and factors causing the decline in Alaska could move eastward and pose a threat to the continued existence of the eastern population. The recent declines in pup production in the eastern population are of serious concern. In addition, the decline numbers of Steller sea lions in California, in the southern extremity of their range, is also of concern.

The Recovery Team's population evaluation criteria focused on population parameters within the western population segment, and thus, offer no guidance for evaluating the status of the eastern population segment. Recently, the Recovery Team recommended that the eastern population segment remain listed as threatened because of concerns regarding (1) the decline in Steller sea lions numbers in southern California, (2) the potential that the decline in the western population could spread east, (3) a slight decrease in pup counts in Southeast Alaska and Oregon in 1994, and (4) a concern that since animals in the western population may occur within the eastern population's geographic range, animals from the western population could be affected by a lack of protective management mechanisms (Lowry, 1994).

An analysis of the conservation status of the eastern population segment of the Steller sea lion in relationship to the standards for threatened status indicates that this population remains vulnerable, but in a manner and to an extent that differs from the vulnerability of the western population segment. This analysis indicates that the third criterion of the proposed population policy is satisfied. Likewise, the available data and information concerning the status of this stock indicates that the eastern population should continue to be considered threatened.

NMFS proposes a separate listing for the eastern population of the Steller sea lion as a threatened species under the ESA. The eastern population segment would consist of Steller sea lions from breeding colonies located east of 144 °W. long.

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 Orford 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 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 Gulf of Alaska during the 1960's and early 70's. 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 probably continues, but the magnitude and significance of this mortality source is not known. In addition, in some cases, the animals may be disturbed as a result of recreational activities. 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, these harvests probably are not a major or substantial cause of recent population changes.

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. It is unlikely that utilization of Steller sea lions for scientific or educational purposes has 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 Gulf of Alaska 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 Act, NMFS has the authority to regulate fishing activities that may be affecting sea lions, directly or indirectly. However, the adequacy or inadequacy of existing regulatory mechanisms and protective regulations 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, or kill or attempt to harass, hunt, capture, or kill any marine mammal. Certain exceptions 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, 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.

The regulatory mechanisms prohibiting the taking of Steller sea lions generally have been effective.

Regulations prohibiting the discharge of firearms: Regulations adopted with the original listing of Steller sea lions as threatened prohibited the discharge of firearms at or near these animals. Although intentional lethal taking of sea lions was prohibited at that time, there had been reports that firearms were used to deter sea lions from interfering with fishing operations.

In a separate action, NMFS has proposed regulations and guidelines for deterring marine mammals as required under new section 101(a)(4) of the MMPA (60 FR 22345, May 5, 1995). These deterrence measures would prohibit the use of firearms for deterring marine mammals from interacting with fishing gear or catch. 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).

As noted above, illegal shooting of Steller sea lions may be continuing, but the regulations adopted at the time of the original listing of the species as threatened are viewed, in general, as effective and adequate. NMFS proposes to continue these types of protections for both the eastern and western population segments. The proposed regulation in this action would expand the definition of ''firearm'' to make the definition consistent with the approach proposed in the marine mammal deterrence measures.

No approach in buffer areas: Regulations adopted with the original listing of Steller sea lions 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 were provided. All of the specified rookery sites are within the range of the western population segment.

The purposes of the buffer areas were 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 generally are viewed as effective.

NMFS is proposing to continue the existing regulatory buffer areas in the western area. At this time, NMFS is not proposing additional buffer areas in the western area or any buffer area protections for rookery sites in the eastern area. Specific case-by-case buffer area or related protections may be considered in the context of section 7 consultations. Comments are invited with respect to the need for changes in buffer area protections.

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 to replace the interim exemption program that was established by the 1988 amendments to the MMPA. 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 replaces the previous quota system and focuses on reducing the incidental mortality and serious injury of marine mammals from strategic stocks, i.e., those that are listed as endangered or threatened under the

ESA, those that are listed as depleted under the MMPA, and those for which human-caused mortality exceeds the estimated potential biological removal (PBR) for the stock. 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.

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. Stocks of marine mammals listed as threatened or endangered under the ESA are considered ''strategic stocks'' under the MMPA, and NMFS is to develop and implement take reduction plans for such stocks that have either frequent or occasional interactions with commercial fisheries.

The goal of these plans is to reduce incidental mortality or serious injury of marine mammals during commercial fishing operations to less than the PBR level within 6 months of implementation and to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001. NMFS is committed to convening take reduction teams to develop take reduction plans for strategic stocks of marine mammals, including both the western and eastern populations of Steller sea lions.

In addition to take reduction plan implementation, section 101(a)(5) of the MMPA allows NMFS to authorize the take of threatened and endangered marine mammals incidental to commercial fishing operations only if, among other things, that take will have a ''negligible impact'' on the stock. NMFS issued an Incidental Take Statement (on August 25, 1995) that authorizes, under section 7(b)(4) of the ESA, the incidental mortality and serious injury in commercial fisheries.

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 native Alaskans 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. If subsistence takings materially and negatively affect the species, 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 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 consisting of representatives from 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. Through co-management agreements between NMFS and the Alaska Native Sea Lion Commission or tribal entities, self-management and regulation of the subsistence harvest by Alaska Native tribes, communities, or the Commission will be developed. NMFS is not considering regulation of the subsistence harvest at this time but hopes to work with Alaska Native communities and representatives to ensure that subsistence harvest does not adversely affect the Steller sea lion population.

Critical habitat: Currently, designated critical habitat for Steller sea lions includes major rookeries in Alaska, Oregon and California, major haulout areas in Alaska, and three special aquatic foraging areas in waters off Alaska, the Shelikof Strait are, the Bogoslof area, and the Seguam Pass area.

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 that 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 of the continuing decline in the western population segment. The Gulf of Alaska (GOA)/Bering Sea and Aleutian Island management area (BSAI) 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 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 and temporal restrictions on the GOA pollock harvest to divert some fishing effort away from sea lion foraging areas and to spread effort over the calendar year.

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. However, NMFS is concerned about the adequacy of these protective measures and believes that reevaluation of the regulations is needed. Further, the Recovery Team has recommended NMFS evaluate the need for additional measures in order to enhance food availability near rookeries and haulouts in the western area. Current regulations of the groundfish fisheries in the GOA and BSAI were implemented under the Magnuson Act. NMFS anticipates that additional protections or changes in these measures would also be

implemented under that Act. NMFS is not proposing such revisions at this time although comments on this issue are invited.

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. As mentioned above comments received on the status review notice included suggestions that additional regulations were needed to protect Steller sea lions from the effects of oil and gas exploration and development.

In most cases, other agencies, such as Minerals Management Services and the Forest Service, are more involved in the direct regulation of these types of activities. Of course, these agencies are expected to consult with NMFS on actions they authorize, fund, or carry out to ensure these actions are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify critical habitat. Reinitiation of consultation is expected in most situations, given recent information concerning the status of the Steller sea lions. Comments received concerning the adequacy of regulations issued by other agencies will be considered during the consultation process.

Conclusions regarding the inadequacy of existing regulatory mechanisms: NMFS has not made a final determination with respect to the adequacy or inadequacy of existing regulatory mechanisms. NMFS recognizes the need for further consideration of the need for, the adequacy of, and the benefits of existing regulations. In some cases, even after further study, it may be difficult or impossible to make definite determinations about the adequacy of specific regulations because of the lack of knowledge or understanding of the mechanisms contributing to the decline or vulnerability of Steller sea lion populations.

NMFS is in the process of reinitiating or requesting reinitiation of consultation under section 7 of the ESA with respect to various agency actions that may affect Steller sea lions. Reinitiation is necessary because of new information about the status of Steller sea lions and is expected to help NMFS assess the adequacy of certain regulatory mechanisms.

In some cases, NMFS anticipates that regulations may be needed to be revised to protect Steller sea lions or to aid population recovery. Review and revision of Steller sea lion management regulations, to the maximum extent practicable, will be undertaken in full consultation with affected parties, Federal and state agencies, and public interest groups. Except with respect to the regulatory measures proposed in this action, NMFS anticipates that major regulatory revisions will be implemented by rulemaking that is separate from any final ESA listing reclassification.

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. Changes 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 frequently interact with commercial fisheries, and many have been reported incidentally taken in fisheries in the Gulf of Alaska, Bering Sea, and Aleutian Islands area. Estimates of the total number of Steller sea lions taken in commercial trawl fisheries in these waters from 1966 through 1988 exceed 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 Gulf of Alaska during certain time periods. In recent years, the number of Steller sea lions taken in Federally-managed commercial groundfish fisheries in the Gulf of Alaska, Bering Sea, and Aleutian Islands has been relatively low (less than 30/year), and incidental take in these fisheries is no longer thought to be a major factor affecting the western population.

Alaska Native subsistence hunters have been estimated to take about 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 and Mischler, 1993; 1994). These removals have an impact on the population although the magnitude of estimates in comparison to the reported declines indicate that subsistence harvest has not been a significant factor in the decline. However, should the western population segment continue to decline and the subsistence harvest continue at the same level, it may become significant.

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 (Southeast Alaska) have been estimated at less than 10 animals annually (Wolfe and Mischler, 1993; 1994).

The calculated PBR for the eastern population of Steller sea lion is 706 animals, well above the current level of human-caused mortality.

Food availability for the western population segment: Steller sea lions are opportunistic feeders, that feed primarily on schooling demersal 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 and 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 wallege 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 and Merrick, 1989; Ferrero and Fritz, 1994).

One working 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 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 these hypotheses, 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 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 1970's and 1980's. 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 populations: 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 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.

Proposed Determinations

The best available information indicates that Steller sea lions should be managed as two discrete population segments and NMFS proposes separate listings of the eastern and the western population segments of the Steller sea lion for the purposes of the ESA.

Available data on population trends indicate that the western population 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. Although the precise cause(s) of the decline have not been determined, it is likely that the current condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

Therefore, NMFS proposes that the western population of Steller sea lions be listed 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 has exhibited a stable to increasing 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 proposes to maintain a threatened listing for this portion of the geographic range. This proposed determination allows a differentiation between the two populations that acknowledges the different individual population trends, but does not lose sight of the overall trend for the species. NMFS, in conjunction with the Recovery Team, will develop appropriate delisting criteria for the eastern population segment.

NMFS Policies on Endangered and Threatened Wildlife

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of new policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and 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).

Role of peer review: The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, the Services will solicit the expert opinions of three appropriate and independent specialists. Further, independent peer reviewers will be selected from the academic and scientific community, Tribal and other native American groups, Federal and state agencies, and the private sector.

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 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 Agency 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 three nautical miles of a listed Steller sea lion rookery site. This includes, but is not limited to, transitting through the rookery site in a vessel, anchoring within any rookery site or fishing within any rookery site; and

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 take of endangered species for subsistence purposes and the take must not be done in a wasteful manner.

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.

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

References Cited

A complete list of all references cited herein are available upon request (see **ADDRESSES**).

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, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

Dated: September 28, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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 proposed to be 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. 1361 *et seq.* and 1531–1543.

2. In § 222.23, in paragraph (a) after ''Saimaa seal (*Phoca hispida saimensis*);'' insert ''Steller sea lion (*Eumetopias jubatus*), western population (the western population consists of Steller sea lions from breeding colonies located west of 144° W. long.);''.

* * * * *

3. Section 222.32 is added to subpart D to read as follows:

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

General. Special rules relating to endangered Steller sea lions are provided at part 227, subpart B.

PART 227—THREATENED FISH AND WILDLIFE

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

Authority: 16 U.S.C. 1361 *et seq.* and 1531–1543.

§ 227.12 [Amended]

5. In § 227.12, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(4), and (b)(2) are revised to read as follows:

(a) *General prohibitions.* Except as provided under paragraph (b) of this section, the prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to the western population of Steller sea lions identified at part 222 also apply to the eastern population which consists of Steller sea lions from breeding colonies located east of 144° W. long.

(1) *No discharge of firearms or similar devices.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm or similar device at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm or similar device includes any weapon capable of propelling an object resulting in, or likely to result in, injury including, without limitation, guns, crossbows, spearguns, bangsticks, archery gear, harpoons and spears.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

* * * * *

(4) *Quota.* 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 should be reported within 30 days to the Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. 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.

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50 CFR Part 651

[I.D. 092695D]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a 1-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: Written comments will be accepted through October 9, 1995, on Framework Adjustment 12 and through October 18, 1995, on draft Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery. The meeting will be held on Wednesday, October 11, 1995, at 10 a.m.

ADDRESSES: The meeting will take place at the Holiday Inn, One Newbury Street, at the intersection of Routes 1 and 128, Peabody, MA 01960; telephone: (508) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council (617) 231–0422.