

S J R

85

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/20/90

FURTHER:

24 hr. notice waived
Date of 5-Day Notice: 5-5-90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-5-90

Resources

Committee considered

SJR 85

Incidental take of Stellar sea lions by commercial fisheries.

and recommended:

- replace with _____ CS _____ same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

William Sturgis

Debra

Paul

Fahrenkamp Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Incidental take of Steller sea lions
 Sponsor: Senate Resources Committee
 Requestor: _____

Agency Affected: _____
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---


FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Nancy Petersen 
 Division: Staff, Senate Resources Committee Phone: 465-3834
 Date: 5-6-90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 405-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BOSTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff

DATE: April 25, 1990

RE: Senate Joint Resolution 85 - "Relating to the incidental take of Steller sea lions by commercial fisheries."

I respectfully request that SJR 85 be heard by the Senate Resources Committee at the earliest opportunity.

SJR 85 addresses the recent declaration that Alaska's Steller sea lions are a threatened species under the Endangered Species Act. With this declaration, the National Marine Fisheries Service implemented a series of interim protective measures. One of the measures was to reduce by half the annual incidental kill quota from 1,350 to 675. Once the kill quota is reached, commercial fishing operations that impact sea lions will be in jeopardy.

The interim measures will be in effect until Dec. 31, 1990, at which time NMFS will have adopted a permanent regulation. The kill quota will most likely remain the same.

SJR 85 requests NMFS to use June 1 as the date at which to start the count on future annual kill quotas. This date would be most advantageous to Alaska's commercial salmon fishing industry. A January 1 date would allow the Bering Sea factory trawl fishery -- which is notorious for its excessively high catch of incidental species -- the first opportunity to take sea lions.

Attached as backup are a NMFS news release announcing the adoption of emergency regulation for sea lions and a copy of the official Federal Register notice declaring sea lions a threatened species. The provision SJR 85 is concerned with is on pages 12647-12648 (pages 3-4) under the heading: 3. Establish Incidental Kill Quota.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

FOR IMMEDIATE RELEASE

April 5, 1990

Steller Sea Lions Designated as a Threatened Species

Juneau . . . The National Marine Fisheries Service adopted an emergency regulation today that designates Steller sea lions as a "threatened" species under the Endangered Species Act. This action was taken in response to a dramatic decline in the number of Steller sea lions counted at major rookeries in central and western Alaska between 1960 and 1989.

The emergency regulation prohibits shooting at or near any Steller sea lion in U.S. waters, except for Native subsistence. It also prohibits boats from coming within three miles of certain Steller sea lion rookeries (locations where pups are born) and empowers the Secretary of Commerce to place observers on any fishing vessel in order to monitor the accidental capture of sea lions in fishing gear. In addition, the regulation restricts the number of sea lions which may be accidentally caught and killed during fishing operations west of 141 degrees W. longitude to 675 animals.

The National Marine Fisheries Service will immediately initiate work on a plan to guide the long-term recovery of the Steller sea lion population. The Service will also continue to investigate the cause of the decline of the sea lion population. Possible causes include shooting, accidental capture during



commercial fishing operations, the influence of commercial fishing on food supply, disease, natural environmental fluctuations, or other unknown changes in the ecosystem. Surveys by the National Marine Fisheries Service have shown that counts of Steller sea lions in central and western Alaska have dropped 63% since 1985 and 82% since 1960. On rookeries from the Kenai Peninsula to Kiska Island in the western Aleutians, the total number of sea lions counted has declined from a high of 140,000 in 1956-60 to about 25,000 in 1989.

Violations of laws protecting Steller sea lions are subject to severe civil and criminal penalties, including fines of up to \$25,000, imprisonment for up to one year, and vessel forfeiture.

For more information on this emergency regulation, contact Steve Pennoyer, Regional Director, National Marine Fisheries Service, at 586-7221.

###

COMPLIMENTS OF
UNITED FISHERMEN'S MARKETING ASSOCIATION, INC.
Box 1035, Kodiak, Alaska 99615
Tel. (907) 486-3453

performs as its principal function any activity pertaining to the enforcement of criminal laws." The commentator asserts that NSF's Office of Inspector General (OIG) does not perform as its principal function any activity pertaining to criminal laws, but implies that an investigative unit within OIG may well do so. We do not agree with the commentator that OIG does not perform as its principal function any activity pertaining to criminal laws. The Inspector General Act of 1978, as amended, specifically mandates Inspectors General to investigate allegations of criminal violations and NSF's Office of Inspector General does so. Moreover, NSF's Office of Inspector General Investigative Files are, in fact, maintained by the Office of Inspector General's Investigations Unit as the commentator implies would be preferable.

This rule has been reviewed under Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of \$100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 613

Privacy Act.

For the reasons set forth above 45 CFR, Chapter IV, part 613, is amended as follows:

PART 613—PRIVACY ACT REGULATIONS

1. The authority citation for Part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(b).

2. Section 613.6 (c) and (d) is added as follows:

§ 613.6 Exemptions.

(c) *OIG Files Compiled for the Purpose of a Criminal Investigation and for Related Purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the Foundation hereby exempts the system of records entitled "Office of Inspector General Investigative Files," insofar as it consists of information compiled for the purpose of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

(d) *OIG Files Compiled for Other Law Enforcement Purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the Foundation hereby exempts the systems of records entitled "Office of Inspector General

Investigative Files," insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f):

Dated: March 30, 1990.

Charles H. Herz,
General Counsel.

[FR Doc. 90-7882 Filed 4-4-90; 8:45 am]
BILLING CODE 7550-01-44

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900387-0087]

Listing of Steller Sea Lions as Threatened Under Endangered Species Act With Protective Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comments.

SUMMARY: The number of Steller (northern) sea lions (*Eumetopias jubatus*) observed on certain rookeries in Alaska declined by 63% since 1985 and by 82% since 1980. The declines are spreading to previously stable areas and accelerating. Significant declines have also occurred on the Kuril Islands, USSR. NMFS is listing the Steller sea lion as a threatened species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA) and is establishing protective regulations as emergency interim measures to begin the population recovery process. Comments are requested on whether or not the species should be listed as endangered or threatened, possible causes of the decline, and conservation measures and protective regulations needed to prevent further declines.

DATES: This emergency rule is effective on April 5, 1990, and expires on December 31, 1990. Comments are requested by May 7, 1990.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (E/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD, 301-427-2322, or Dr. Howard Braham, Director, National

Marine Mammal Laboratory, Seattle, WA, 206-526-4046.

SUPPLEMENTARY INFORMATION:

Background

The Steller (northern) sea lion, *Eumetopias jubatus*, ranges from Hokkaido, Japan, through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, Gulf of Alaska, southeast Alaska, and south to central California. There is not sufficient information to consider animals in different geographic regions as separate populations. The centers of abundance and distribution are the Gulf of Alaska and Aleutian Islands, respectively. Rookeries (breeding colonies) are found from the central Kuril Islands (40° N.) to Ano Nuevo Island, California (37° N.); most large rookeries are in the Gulf of Alaska and Aleutian Islands. More than 50 Steller sea lion rookeries and a greater number of haulout sites have been identified.

In 1985, 68,000 animals were counted in Alaska from Kenai Peninsula to Kiska Island, compared to 140,000 counted in 1950-60. A 1988 Status Report concluded that the population size in 1985 was probably below 50% of the historic population size in 1950-60 and below the lower bound of its optimum sustainable population level under the Marine Mammal Protection Act, 16 U.S.C. *et seq.* (MMPA). A 1989 survey showed that the number of observed animals from Kenai to Kiska declined to 25,000 animals. This indicates a decline of about 82% from 1950-60 to 1989 in this area. The counts are not an estimate of total numbers of animals but include only those animals on the beach (excluding pups) at the time of the survey. As such, they can be used to indicate trends in abundance, rather than estimating total species abundance. Copies of the 1988 Status Report and a 1989 Update are available from the ADDRESSES listed above.

Species abundance estimates during the late 1970s ranged from 245-290,000 adult and juvenile animals. Although we do not have current population estimates, total counts of sea lions during the 1989 survey were about 66,000, with declines reported on the Kuril Islands, Aleutian Islands, and the Gulf of Alaska:

Alaska	63,000
WA, OR and CA	4,000
British Columbia	18,000
Soviet Union	0,000
	66,000

Designation Under the MMPA

Based on the 1988 Status Report, NMFS intended to prepare a proposed rule to designate the Steller sea lions in Alaska as depleted under the MMPA and published an Advance Notice of Proposed Rulemaking (53 FR 10290, May 6, 1988). Most comments expressed strong concern that a depletion designation for Steller sea lions would seriously curtail or possibly end commercial fishing, especially trawl fishing, in the sea lion's range because incidental take of depleted stocks was prohibited by the MMPA.

In October 1988, the MMPA was amended to include a new section 114 to replace most earlier provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The purpose of the new system was to provide better information on interactions between commercial fisheries and marine mammals and allows commercial fishing operations to continue whether or not depleted stocks or stocks of unknown status were taken. Information collected during the exemption period will be used in the development of a long-term program governing the taking of marine mammals associated with commercial fishing after October 1, 1993.

Petition for Listing

On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS for an emergency rule listing all populations of Steller sea lions in Alaska as endangered and to initiate a rulemaking to make that emergency listing permanent. Under section 4 of the ESA, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990, 55 FR 6301). Comments received in response to that notice and this emergency rule will be considered in determining whether the species should be proposed for listing as endangered or threatened.

Summary of Factors Affecting the Species

An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of

the ESA. These factors as they apply to Steller sea lions are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Steller sea lions breed on islands in the North Pacific Ocean generally far from human habitations. Although rookery space availability could be a limiting factor for this species, there is no evidence of rookery habitat curtailment. In fact, as the number of animals continues to decline, rookeries are being abandoned and available rookery space is increasing.

The feeding habitats of Steller sea lions in Alaska may have changed. State of Alaska biologists found that populations in the Gulf of Alaska during the 1980s had slower growth rates, poorer physical fitness (lower weights, smaller girth), and lowered birth rates. Some data show a high negative correlation between the amount of walleye pollock caught and sea lion abundance trends in the eastern Aleutians and central Gulf of Alaska. It is possible that a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline in the number of Steller sea lions in western and central Alaska.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Between 1963-72, over 45,000 Steller sea lion pups were commercially harvested in the eastern Aleutian Islands and Gulf of Alaska. This harvest may explain declines seen in these areas through the 1970s. Small subsistence harvests of Steller sea lions occur in Alaska but are not of sufficient magnitude to contribute to the overall decline. A small number has also been taken for public display and scientific research purposes.

C. Disease or predation. Sharks, killer whales and brown bears are known to prey on Steller sea lion pups. Mortality from sharks and bears are not considered to be significant. When sea lion abundance was high, the level of mortality from killer whales was probably not significant but as sea lion numbers decline this mortality may exacerbate the decline in certain areas.

Disease resulting in reproductive failure or death could be a source of increased mortality in Steller sea lion populations, but it probably does not explain the massive declines in numbers. Antibodies to two types of pathological bacteria (*Leptospira* and *Chlamydia*) and one marine calicivirus (San Miguel Sea Lion Virus) were found in the blood of Steller sea lions in Alaska. *Leptospira* and San Miguel sea

lion viruses may be associated with reproductive failures and deaths in California sea lions and North Pacific fur seals. *Chlamydia* has not been studied previously in sea lions, but is known from studies of Pribilof Island fur seals. None of these agents is thought to be a significant cause of mortality in Steller sea lions.

D. The inadequacy of existing regulatory mechanisms. Some protection for the Steller sea lion is provided under MMPA which prohibits the taking of Steller sea lions with certain exceptions including an interim exemption for commercial fishing. Once 1,350 Steller sea lions have been killed incidental to commercial fishing, section 114 of the MMPA requires NMFS to prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Intentional lethal takes are prohibited. In addition, section 114(g) of the MMPA provides that regulations may be prescribed to prevent taking of a marine mammal species in a commercial fishery if it is determined that the incidental taking of the marine mammal in that fishery is having or will likely have a significant adverse impact on that marine mammal population stock. The MMPA also requires NMFS to prepare a conservation plan for Steller sea lions by December 31, 1990.

E. Other natural or manmade factors affecting its continued existence. Steller sea lions are taken incidental to commercial fishing operations in the Gulf of Alaska and the Bering Sea.

Between 1973-1988, U.S. observers on foreign and joint venture vessels operating in these areas reported 3,661 marine mammals taken. Steller sea lions accounted for 90% of this observed total. Based on these observed takes and an extrapolation of total tonnage of fish caught over this time period, the total number of Steller sea lions incidentally killed by the foreign and joint venture commercial trawl fisheries during 1973-1988 is an estimated 14,000. However, since 1985 the level and rate of observed incidental take has decreased to the point where, by itself, it is not sufficient to account for the most recently observed declines. Incidences of fishermen shooting adult Steller sea lions at rookeries, haul out sites, and in the water near boats have been reported, but the magnitude of this source of mortality is unknown.

Observer programs under the MMPA, and for the groundfish fisheries of Alaska under the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), will assist NMFS in

determining whether the incidental take of Steller sea lions during commercial fishing operations or other observable activities are factors in the decline in the number of these animals in Alaska.

Reasons for Emergency Determination

As discussed above, the number of Steller sea lions observed on certain rookeries in Alaska declined by 63% since 1985 and by 82% since 1980. The declines are spreading to previously stable areas and accelerating. The decline has spread from the eastern Aleutian Islands, where the decline began in the early 1970s, east to the Gulf of Alaska, and west to the previously stable central Aleutian Islands. Significant declines have also occurred on the Kuril Islands, USSR. The rates of decline in the eastern Aleutian Islands and the western Gulf of Alaska are increasing. The cause(s) of these declines have not been determined, and essential research is continuing.

NMFS concludes that the Steller sea lion should be listed as a threatened species on an emergency interim basis and believes that immediate implementation of the protective measures of the ESA will aid recovery efforts.

Available Conservation Measures

Conservation measures for species that are listed as endangered or threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Section 7(a) of the ESA requires Federal agencies to carry out programs for the conservation of endangered and threatened species. Section 7(b) requires that each Federal agency insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat.

In the case of the Steller sea lion, Federal actions most likely to affect this species include approval and implementation of Fishery Management Plans and regulations under the Magnuson Act, permitted activities associated with timber, mineral, and oil development on land near rookeries and haulout sites, and leasing activities associated with oil and gas exploration and development on the Outer Continental Shelf.

In addition, the following emergency conservation measures are being implemented by NMFS to facilitate recovery of the Steller sea lion:

A. Management Actions

1. Monitoring incidental take in fisheries. Under the Interim exemption system established by the 1988 MMPA amendments, all Category I fisheries are subject to 20-35% observer coverage. Similarly, almost all Federally-licensed vessels in groundfish fisheries off Alaska will carry observers. All groundfish vessels over 125 feet in length and all foreign vessels will carry observers at all times. Each groundfish vessel of 60-125 feet in length will carry observers during 30% of its operations in each three-month period. These observer programs, together with estimates of fishing effort, will be used to make monthly estimates of the level of incidental kill of Steller sea lions in observed fisheries. NMFS may also establish additional observer programs in other fisheries under the authority in this emergency rule. These actions will allow NMFS to monitor a quota or catch limit for Steller sea lions.

2. Enforcement. NMFS intends to aggressively enforce these regulations, especially as they relate to intentional, lethal takes of Steller sea lions. Enforcement resources will be provided, to the extent possible, to cover areas and seasons where Steller sea lions are most vulnerable, to initiate an active TIP/Reward Program, and to promote public awareness.

3. Establishment of a Recovery Program. NMFS is establishing a Recovery Team to provide recommendations on further conservation measures. Members of the North Pacific Fishery Management Council, the Marine Mammal Commission, state agencies, and other prominent scientists and environmentalists will be invited to participate in developing and implementing a recovery program. The Pacific States Marine Fisheries Commission, in emergency consultation with interested parties, held a workshop on February 21-22 to identify and assess additional possible actions that might be undertaken on an emergency basis.

B. Protective Regulations

1. Prohibit shooting near sea lions. Although the MMPA prohibits intentional lethal take of Steller sea lions in the course of commercial fishing, fishermen have not been prohibited from harassing sea lions that are interfering with their gear or catch by shooting at or near them. Since these practices may result in inadvertent mortalities, NMFS is prohibiting shooting at or near Steller sea lions.

2. Establish Buffer Zones. NMFS is establishing a buffer zone of 3 nautical

miles around the principle Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. Rookeries in southeastern Alaska, east of 141° W longitude, have not experienced the declines reported in central and western Alaska and no buffer zones are established for these areas. No vessels are allowed to operate within the 3-mile buffer zones during the period of this emergency rule. Similarly, no person may approach on land closer than one-half (½) mile or within sight of the listed Steller sea lion rookeries. On Marmot Island, no person may approach closer than one and one-half (1½) miles from the eastern shore. Marmot Island has traditionally been the most important Steller sea lion rookery in Alaska and the eastern beaches are used throughout the year by Steller sea lions.

The purposes of the buffer zones include restricting the opportunities for individuals to shoot at sea lions and facilitating enforcement of this restriction; reducing the likelihood of interactions with sea lions, such as accidents or incidental takings in these areas where concentrations of these animals are expected to be high; minimizing disturbances and interference with sea lion behavior, especially at pupping and breeding sites; and, avoiding or minimizing other related adverse effects. Exceptions are provided for emergency situations and navigational transit of certain passageways and straits. Furthermore, a mechanism is provided to allow the Regional Director, with the concurrence of the Assistant Administrator, to provide exemptions for certain activities. All exemptions must be in writing and obtained in advance of the activity. In order to be eligible for an exemption, the activity must not have a significant adverse impact on sea lions, the activity must have been conducted historically or traditionally in the buffer zones, and there must be no feasibly available and acceptable alternative to or site for the activity.

An exception is included in the regulations for conducting research on Steller sea lions provided that the research is authorized by a scientific permit issued under the MMPA. Because this is an emergency action and NMFS does not want to delay valuable research, NMFS is not requiring a separate research permit under the ESA.

3. Establish Incidental Kill Quota. When the MMPA was amended in 1988 to require emergency regulations once 1,350 Steller sea lions were incidentally killed in any year, the population numbers were based, in part, on 1985 data. In four study areas in Alaska,

Steller sea lions declined by an average of 63% from 1985 to 1989. Therefore, as an emergency interim measure NMFS believes that the incidental killing of more than 675 Steller sea lions on an annual basis should be prohibited in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141° W longitude. The most serious declines in numbers of Steller sea lions have occurred in this area. As discussed above, in association with this quota, NMFS is instituting a more efficient monitoring system. If NMFS determines and publishes notice that 675 Steller sea lions have been killed in this area during 1990, it will be unlawful to kill any additional Steller sea lion. Animals killed during 1990 prior to the publication of this emergency rule will be counted against this quota. NMFS may issue emergency rules to allocate the quota among various fisheries, establish closed areas, or take other action to ensure that commercial fishing operations do not exceed the quota.

Critical Habitat

The ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. NMFS intends to propose critical habitat at the earliest possible date as a part of the permanent rulemaking. NMFS will consider physical and biological factors essential to the conservation of the species that may require special management consideration or protection. These habitat requirements include breeding rookeries, haulout sites, feeding areas and nutritional requirements. In describing critical habitat, NMFS will take into consideration terrestrial habitats adjacent to rookeries and their need for protection from development and other uses, such as logging or mining.

Classification

Since the Assistant Administrator for Fisheries, NOAA, has determined that the present situation poses a significant risk to the well-being of Steller sea lion populations, emergency regulations can be issued under section 4(b)(7) of the ESA. The Assistant Administrator finds that reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553(b) and (d) of the Administrative Procedure Act.

Section 4(b)(1) of the ESA restricts the information which may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 829 (9th cir., 1981), NMFS has categorically excluded all listing actions under the ESA from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413-23, February 8, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

List of Subjects in 50 CFR Part 227

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

Dated: April 2, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

PART 227—[AMENDED]

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.4 is amended by adding a new paragraph (f) from April 5, 1990 through December 3, 1990, to read as follows:

§ 227.4 Enumeration of threatened species.

(f) Steller (northern) sea lion (*Eumetopias jubatus*).

3. Section 227.12 is added to subpart B from April 5, 1990, through December 3, 1990, to read as follows:

§ 227.12 Steller sea lion.

(a) *Prohibitions*—(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or near a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(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 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 mile 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 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.

(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1.—LISTED STELLER SEA LION ROOKERY SITES¹

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
Outer I.	59°20.5 N	150°23.0 W	51°21.0 N	150°24.5 W	16681	S quadrant.
Sugarloaf I.	58°53.0 N	152°02.0 W			16580	whole island.
Marmot I.	58°13.0 N	151°48.0 W	58°09.5 N	151°52.0 W	16580	SE quadrant.
Chirikof I.	55°47.5 N	155°33.5 W	55°48.5 N	155°43.0 W	16580	S quadrant.
Chowiet I.	56°02.0 N	156°41.0 W	56°01.5 N	156°44.0 W	16013	S quadrant.
Atkins I.	55°03.5 N	159°18.5 W			16540	whole island.
Chemsura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
Pinnacle Rock	54°48.0 N	161°48.0 W			16540	whole island.
Clubbing Rocks(N)	54°43.0 N	162°28.5 W			16540	whole island.
Clubbing Rocks(S)	54°42.0 N	162°26.5 W			16540	whole island.
Sea Lion Rocks	55°28.0 N	163°12.0 W			16520	whole island.
Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
Akurik I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W	16520	Blings Hoop Blight.
Akurik I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Mergan.

TABLE 1.—LISTED STELLER SEA LION ROOKERY SITES ¹—Continued

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
Bogosiof I.	53°56.0 N	168°02.0 W			16500	whole island.
Ogchul I.	53°00.0 N	168°24.0 W			16500	whole island.
Adugak I.	52°54.5 N	169°09.5 W			16500	whole island.
Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
Agligadak I.	52°06.25 N	172°54.0 W			16480	whole island.
Kasatochi I.	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W	16480	N half of island.
Adak I.	51°38.0 N	176°55.5 W	51°38.0 N	176°59.0 W	16460	SW point, Cape Yakak.
Gramp rock	51°29.0 N	178°20.5 W			16460	whole island.
Tag I.	51°33.5 N	178°34.5 W			16460	whole island.
Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
Semisopchnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopchnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
Amchilka I.	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E	16440	East Cape.
Amchilka I.	51°32.5 N	178°50.0 E			16440	Column Rocks.
Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat I.
Kiska I.	51°56.5 N	177°19.0 E	51°58.0 N	177°20.5 E	16440	W central, Lief Cove.
Kiska I.	51°53.0 N	177°13.0 E	51°54.0 N	177°14.0 E	16440	Cape St. Stephen.

¹ Each site extends from the first coordinates listed for latitude and longitude along the shoreline at mean lower low water to the second coordinates listed; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

BILLING CODE 3510-22-M