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 prev 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