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

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.