

North Pacific Fishery Management Council

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Approved by:  _

Date: October 3, 2007

MINUTES

183rd Plenary Session
North Pacific Fishery Management Council
August 2-3, 2007
Marriott Hotel
Anchorage, Alaska

The North Pacific Fishery Management Council met August 2-3, 2007 at the Marriott Hotel in Anchorage, Alaska to review the revised draft Steller Sea Lion Recovery Plan and to discuss previous action on the Bering Sea Atka mackerel MRA. The Scientific and Statistical Committee met August 1-2 at the same location to review and provide comments on the SSL Recovery Plan. The Advisory Panel did not meet. The following Council, staff, and SSC members attended the meetings.

Council Members

Stephanie Madsen, Chair
Doug Mecum for Jim Balsiger
Dave Benson
John Bundy, Vice Chair
Dave Hanson
Doug Hoedel

Roy Hyder
Denby Lloyd/Earl Krygier
Gerry Merrigan
Bill Tweit for Jeff Koenings
Eric Olson
LCDR Lisa Ragone for ADM Brooks
Ed Rasmuson

Note: Mr. Corin (USFWS) and the State Dept. representative were not in attendance.

NPFMC Staff

Gail Bendixen
Jane DiCosimo
Chris Oliver

Maria Shawback
Bill Wilson
Dave Witherell

Scientific and Statistical Committee

Pat Livingston, Chair
Keith Criddle, Vice Chair
Sue Hills
Anne Hollowed
George Hunt

Lew Queirolo
Terry Quinn II
Farron Wallace
Doug Woodby

Appendix I contains the public sign-in register, and a tape log of Council proceedings, including those providing public comment during the meeting.

CALL TO ORDER

Stephanie Madsen, Council Chair, called the meeting to order at approximately 1:06 p.m. on Thursday, August 2, 2007.

Agenda. The agenda was approved as published. This meeting was called specifically to review the new (May 2007) draft Steller Sea Lion Recovery Plan and to review previous action relating to the Bering Sea Atka mackerel MRA. There were no other reports or actions taken.

Minutes. The minutes of the June 2007 were not yet available for review.

[NOTE: Mr. Tweit participated in the entire meeting in place of Dr. Koenings.]

ACTION REQUIRED

- A. Receive report on Draft Revised SSL Recovery Plan and take action as necessary.
- B. Review NMFS letter on Bering Sea Atka mackerel MRA and take action as necessary.

BACKGROUND

A. Draft Revised Steller Sea Lion Recovery Plan

At the April 2007 meeting, the Council received a report from NMFS that another draft of the Draft Revised Steller Sea Lion Recovery Plan would be completed in early May 2007. At the June 2007 meeting, the Council was informed that on May 21, 2007, the new draft recovery plan was released for a 90-day public review (see FR Notice attached as Item A-1); comments are due on or before August 20, 2007. In May 2007, NMFS also posted on their web site the public comments and the peer review comments received on the first draft (May 2006 draft) SSL recovery plan and the agency's responses to those comments. Those two sets of comments and the Agency's responses are attached as Items A-2 and A-3, respectively. The Council's (and SSC's) comments on the May 2006 draft SSL recovery plan are attached as Item A-4.

NMFS informed the Council that it intended to have the second draft recovery plan peer reviewed by the Center for Independent Experts (CIE). The Terms of Reference for the CIE review are attached as Item A-5, and the CIE reviews are attached as Item A-6. The Council decided to commission a Council-sponsored peer review of the recovery plan, and tasked staff to arrange with the North Pacific Research Board for such a review. The terms for that review are in a

Memorandum of Understanding between the Council and NPRB (see attached Item A-7) and the NPRB review is attached as Item A-8.

At its June meeting, the Council decided to hold a special Council meeting in August 2007 to receive a report on the May 2007 draft recovery plan and requested that the SSC also meet at that time to review the recovery plan and provide comments to the Council. At this special August 2007 meeting, the Council and SSC are scheduled to receive several presentations that relate to the May 2007 draft SSL recovery plan and prepare comments or take other action as necessary.

To inform the Council as it reviews the May 2007 draft SSL recovery plan, the Council contracted with Dr. Tom Loughlin to prepare a compendium of information on recovery criteria that have been developed for species listed under the Endangered Species Act (ESA) other than SSLs. That report was completed in May 2007, and was sent out in a Council mailing. Dr. Loughlin's report will be presented to the Council and its SSC at this special meeting. The Executive Summary of this report is provided as Item A-9.

Also, the Council's SSL Mitigation Committee (SSLMC) has reviewed the May 2007 draft SSL recovery plan at their June 19-21 meeting, and that committee compared the recovery criteria in this plan with the Proposal Ranking Tool model developed by the SSLMC. The SSLMC's June 19-21, 2007 meeting minutes contain a synopsis of the Committee's discussions of the May 2007 draft SSL recovery plan (minutes are attached as Item A-10). For reference, the SSLMC's June 2006 meeting minutes, summarizing the Committee's discussions of the May 2006 draft SSL recovery plan, are attached as Item A-11.

Additional resources that may be helpful to the Council as it reviews the May 2007 SSL recovery plan include the NOAA Guidelines for preparing recovery plans for ESA-listed species (Item A-12), and a guide to changes made in the May 2006 draft SSL recovery plan prepared by Council staff for the SSLMC as it reviewed the May 2007 draft SSL recovery plan (Item A-13).

A draft agenda for this August Council and SSC meeting was sent out in a Council mailing in late June 2007. The agenda is summarized below:

1. Introduction, purpose, and resources available for the SSL recovery plan review (Wilson)
2. Presentation of the May 2007 draft Revised SSL Recovery Plan
 - a. Overview of recovery planning, history of the SSL recovery plan, and schedule for completion of the SSL recovery plan (Brix)
 - b. Presentation of the May 2007 draft SSL recovery plan (Brix, NMML staff)
 - c. Center for Independent Experts review of the May 2007 draft SSL recovery plan (Brix)
3. Other presentations
 - a. Report on recovery criteria for ESA-listed species other than SSLs (Loughlin)
 - b. North Pacific Research Board contracted review of the May 2007 draft SSL recovery plan (NPRB Panel Chair)
4. SSC Report
5. Public Comments
6. Discussion and prepare comments and recommendations as appropriate

NMFS staff will present the May 2007 draft Revised SSL Recovery Plan and answer questions.

REPORTS RECEIVED

The Council received the following reports:

- (1) Presentation of the May 2007 draft of the Revised Steller Sea Lion Recovery Plan. Kaja Brix, NMFS-AKR Protected Resources, with assistance from Lowell Fritz, AFSC.
- (2) Center for Independent Experts review and comments on Plan (provided by Ms. Brix).
- (3) Report on Recovery Criteria for ESA-listed species other than Steller sea lions
Provided by Dr. Tom Loughlin, under contract to the NPFMC
- (4) North Pacific Research Board-mediated review of the Plan
Provided by the Panel Chair, Dr. W. D. Bowen
- (5) State of Alaska's Comments on the Draft Plan – provided by Earl Krygier
- (6) Comments by Dr. Andrew Trites, North Pacific Universities Marine Mammal Research Consortium

Additionally, the Council received the following documents in the meeting notebooks:

- (1) Notice of Availability and request for comments (Federal Register notice)
- (2) NMFS' Responses to Public Comments on May 2006 draft SSL Recovery Plan
- (3) NMFS' Responses to Peer Review Comments on May 2006 draft SSL Recovery Plan
- (4) NPFMC Comments on May 2006 draft SSL Recovery Plan
- (5) CIE Terms of Reference for review of the May 2007 draft SSL Recovery Plan
- (6) CIE Reviews of the May 2007 draft SSL Recovery Plan
- (7) MOU for Independent Review of the May 2007 draft SSL Recovery Plan
- (8) NPRB Review of the May 2007 draft SSL Recovery Plan
- (9) Review of Recovery Criteria for ESA-listed Species
- (10) SSLMC Minutes June 19-21, 2007
- (11) SSLMC Minutes June 27-29, 2006
- (12) NOAA Recovery Planning Guidelines
- (13) SSLMC Guide to Review of the May 2007 draft SSL Recovery Plan
- (14) Additional supplementary materials, including the State of Alaska's comments on the May 2007 SSL Recovery Plan

REPORT OF THE SCIENTIFIC AND STATISTICAL COMMITTEE

The SSC spent one and a half days receiving reports and discussing the Plan. The full SSC report is included with these minutes as Appendix II. Following are the points specifically pointed out to the Council during the oral report given by Keith Criddle, SSC Vice Chair:

Distribution and Population Structure

Metapopulations or other alternatives to the current legal structure of two distinct populations should be developed further. In particular, a discussion of the criteria (for example rates of movement in addition to genetics) that would be needed for the agency to revise its determination of the population structure would be helpful. The SSC recognizes that analysis and interpretation of genetic and movement data is not easy. **Therefore, until stock structure has been definitively delineated, the recovery plan should explore the management implications of possible alternative stock structures.**

Factors Potentially Influencing Western and Eastern Populations

Overall, this section presents a comprehensive discussion of the potential threats to Steller sea lion recovery. **The SSC is not aware of additional threat factors that should be considered, but notes that the recovery of Steller sea lions will be influenced by the interplay of multiple factors.**

The section on sequential megafaunal collapse should be moved either immediately before, or immediately after, the section on the potential impact of killer whale predation. **The SSC agrees with the NPRB reviewers who remarked that rejecting the sequential megafaunal collapse hypothesis does not lessen the possibility of top-down impacts of killer whale predation; it is a separate issue.**

Threats Assessment

Overall, this section presents a comprehensive discussion of potential threats to Steller sea lion recovery that might be operating in both the eastern and western DPS. Sections of the recovery plan regarding threats posed by killer whale predation, threats posed by environmental change, and threats posed by competition with fisheries have been revised from the 2006 version of the plan that was provided to the external reviewers. **To guard against the perception of an unbalanced treatment of the scientific data, and to be sure that all new data are included, a small group of non-agency scientists should be included in a team responsible for preparing a final draft of the recovery plan.**

Recovery Strategy, Development of Recovery Criteria, and Delisting Criteria

One substantive improvement in this draft recovery plan is that it more fully incorporates the PVA model developed by Goodman. The SSC reiterates that an appropriately structured PVA “provides a useful framework for evaluation of population recovery and changes in extinction risk”. Nevertheless, endorsement of the use of a PVA, should be understood as an endorsement of PVA as an analytic framework designed to highlight assumptions and data gaps; our August 2006 report includes several recommendations for needed improvements and modifications to the PVA developed by Goodman as well as several suggestions for improvements that are needed in the estimation and forecasts of population trajectories.

The recovery criteria are based on an assumption that a change in carrying capacity has not occurred, even though the recovery plan (page 89) acknowledges that it may have. **The recovery plan should include a discussion of how a modified carrying capacity might affect the appropriateness of the proposed recovery criteria.** When the PVA is developed for the implementation plan, the issue of a change in carrying capacity should be fully explored.

The recovery plan should include a more detailed explanation of the reasons for the recovery criteria and how their attainment will be assessed.

The description of the recovery criteria should be revised to emphasize that the specific values obtained (e.g., 3% over thirty years) are subject to revision as new information becomes available and new analyses are undertaken. Furthermore, those values should be connected with the concepts of recovery explained earlier in the section involving risk probability and increasing population trends.

The process for the 5-year evaluation of recovery criteria should be described in the recovery plan and in the implementation plan. It is important that this process be specified soon, because compiling and analyzing new information will be a multi-year task.

Recovery Action Outline and Implementation Schedule for the Western DPS of SSL

The SSC has again reviewed the proposed recovery actions for the wDPS of SSL and notes that four items (1—maintain population monitoring and research on key threats, 2—maintain current fishery

conservation measures, 3—design and implement an adaptive management program, and 4—develop an implementation plan) were selected from the list of recovery actions and identified on pages 124-125 as items to be implemented. The SSC suggests that the plan provide greater justification for the selection of those items. Items two through four are identified in the plan as having priority 2a, while numerous other actions identified in the schedule (pages 176-184) as priority 2a are not included. **In particular, action 1.2 “estimate vital rates” should be included in the short list of priority items to implement.** We concur that the implementation plan itself (item 3) belongs in the list of items to implement first. When the implementation plan is written, attention should be given to identification of actions that will be taken in the event that one or more of the recovery criteria for downlisting and delisting are not met during periodic review/revision of the recovery plan (e.g., every 5 years). **The implementation plan should provide an outline of the process, timeline, and expected participants for revising the plan and using a PVA to identify the most prudent actions to promote recovery.**

The SSC suggests that item 2.1 “maintain and modify critical habitat” be elevated from priority 3 to 2a. In addition, research to specifically test whether the wDPS is now under a new, lower natural carrying capacity should be included as a priority 2a action, and a hypothesis testing framework should be included with clear criteria for that determination.

As noted in our August 2006 report and as noted by the NPRB review panel, because the causes of the decline of Steller sea lion populations and their slow recovery are unknown, the efficacy of management actions taken to date and of the actions contemplated in the recovery plan is, at best, uncertain.

The entire set of SSC comments are found in Appendix II to these minutes.

COUNCIL DISCUSSION AND ACTION

[NOTE: Earl Krygier participated in the discussion for Denby Lloyd.]

Several Council members were concerned that the current draft plan had been revised after the SSL Recovery Team had finished its work. During public comments it was noted that several of the Team members have expressed concern that the Plan had been changed and some may wish to have their names removed from the current draft. It was noted that the Plan is an Agency document and many people were involved in preparing the Plan.

There was discussion relating to using the recovery criteria within the Plan in developing biological opinions for possible future downlisting and delisting. Ms. Madsen asked for clarification with regard to the possibility of a population moving between areas. Ms. Brix responded that the issue is complicated and may be difficult to explain. She noted that there may be more concern over the influence of the specific recovery criteria on the assessment of jeopardy and adverse modification in a Section 7 consultation biological opinion than is warranted. It's more an assessment about the impact of a proposed fishery management action on the standards of jeopardy and adverse modification and whether a proposed action has some component for recovery of the listed species. Ms. Brix pointed out that it's not a situation where a specific threshold is established and measuring proposed management actions against that threshold. It's more a question of how much impact a proposed action would have on recovery.

John Lepore (NOAA-GCAK) reminded the Council that recovery plans do not have the force and effect of the law; that they are guidance documents. While the Recovery Plan would be instructive for future management actions, it is his opinion that it would not unduly restrict the Council. Mr. Lepore reminded the Council of a General Counsel letter in January 2007 expressing the Agency's opinion that it would be good public policy to move forward with the Recovery Plan prior to proceeding with a biological opinion.

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Earl Krygier moved the following:

The Council moves that a letter be drafted and sent to the Secretary regarding the Steller Sea Lion Recovery Plan. The Council endorses and appends the SSC's comments on the May 2006 and May 2007 Recovery Plan drafts. The letter should highlight the following concerns and issues:

1) Modify the wDPS recovery criteria as follows:

a) Modify the downlisting criteria: The population will be downlisted from endangered to threatened if the population is determined to be stable or increasing over a period of 1.5 generations (equivalent to the Team's 15 years) in U.S. jurisdiction, without requiring subarea consideration (current data indicate this period would start in 2000).

b) Modify the delisting criteria: The population will be delisted if the population is determined to be stable or increasing over a period of 3 generations (current data indicate this period would start in 2000).

c) The recovery criteria requirements to keep in place current fishery mitigation regulations at 50 CFR 679 should be modified to accommodate appropriate adaptive management and mitigation measures based on the best available science. The agency should modify the criteria to focus on adaptive management measures appropriately scaled to localized conditions instead of large scale experimental design. Further, the criteria should call for *appropriate* rather than *current* mitigation measures.

2) Modify the Threats Assessment such that the standard for determining the likelihood of extinction is modified from the standard of 1% chance of extinction in 100 years (10 generations) to 10% chance over three generations (30 years).

3) Reinstate the Recovery Team recommendation that the killer whale predation threat be "Potentially High" rather than "Medium", and conduct additional research and scientific workshops to resolve issues with the assessment of the effects of transient killer whales on the current wDPS population and the impact on the population's recovery. This process should include a broad cross section of scientists with views on all sides of this issue.

4) Increase priority of Critical Habitat redesignation to 2a from level 3.

5) Adopt SSC recommendations on prioritizing actions and developing the Implementation Plan designed around a multiple hypothesis testing framework, including lower carrying capacity.

6) The current analysis is based on the unsupported assumption that conditions leading to the steep decline through the 1980s will occur again. The Council disagrees. The Council recommends a reevaluation of this assumption underlying the PVA. Further, the Council recommends model results excluding periods of high incidental and intentional takes be presented for comparison with results presented in the current draft.

7) Include in the Recovery Plan a provision for an annual report from NOAA regarding the actions taken pursuant to the plan, any new information regarding the status of SSL populations relative to recovery factors, and any new information regarding the status of the species under the listing criteria.

The motion was seconded by Ed Rasmuson.

With regard to the annual report mentioned in Item 7, Mr. Lepore (NOAA GCAK) asked to whom the report would be provided. Mr. Krygier responded that the report should be provided to the Council.

Mr. Krygier's original motion, with accompanying rationale, is attached to these minutes as Appendix III.

Bill Tweit moved to amend the motion to add a recommendation (8) as follows:

8) Delete the ABC adjustment sub-task from Sect. 2.6.6 of the Plan and retain Section 2.6.7 as a priority 3 task. The motion was seconded and carried without objection.

Additionally, Mr. Tweit moved to add the following:

9) The Council recommends that the draft recovery plan summarize and discuss recent field work on localized depletion. The motion was seconded and carried without objection.

Council members asked Mr. Lepore to provide guidance regarding the consideration of foreign stocks when determining the recovery of the Steller sea lion under U.S. jurisdiction. Mr. Lepore responded that the Secretary has the responsibility to consider what is important to the biological aspects of the endangered species throughout its range. While it may not be an actual requirement of the statute, it is within the discretion of the Secretary to consider the health of those foreign stocks if he feels it is critical to the recovery of the Steller sea lions within U.S. boundaries.

The motion, as amended, carried without objection with Doug Mecum abstaining from the vote because the Plan is an Agency document. The final motion is attached as Appendix IV to these minutes.

B. Maximum Retainable Amount for Bering Sea Atka mackerel

At the June 2007 meeting, the Council was informed by NMFS that the Council may wish to reconsider or amend an action already taken to extend the accounting interval for calculating the maximum retainable amount (MRA) for selected groundfish species by the non-American Fisheries Act (AFA) trawl catcher/processors (see attached NMFS letter dated June 5, Item B-1). NMFS presented a concern about potential increased harvest of Atka mackerel in SSL protection areas in the Bering Sea and other implications of this action. NMFS requested that the Council revisit its action, and implement the MRA restrictions so that MRAs for Atka mackerel in these fisheries in the Bering Sea be the same as those implemented for Atka mackerel in the Aleutian Islands and Pacific cod in the BSAI. NMFS staff will be available to answer questions.

Ms. Madsen and Chris Oliver briefly explained the issue which had been brought to the Council's attention during the June Council meeting. There were no other reports. The Council received public comment from John Gauvin, Groundfish Forum.

COUNCIL DISCUSSION/ACTION

Ed Rasmuson moved that the Atka mackerel MRA restrictions in the Bering Sea be the same as those implemented for Atka mackerel in the Aleutian Islands and for Pacific cod in the BSAI. The motion was seconded and carried without objection.

ADJOURNMENT

Chair Madsen adjourned the meeting at 3:31 p.m. on Friday, August 3, 2007.

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APPENDICES:

- I. Tape Log and Public Sign-in Sheet
- II. Report of the Scientific and Statistical Committee
- III. Original motion for recommendations on SSL Recovery Plan w/rationale
- IV. Final motion for recommendations on SSL Recovery Plan, as amended