AGENDA B-7
JUNE 2007

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
1 HOUR

DATE: May 25, 2007

SUBJECT: Protected Resources Report

ACTION REQUIRED

Receive report on Protected Resources issues and take action as necessary.

BACKGROUND

A. Update on FMP Consultation and SSL Recovery Plan

At the April 2007 meeting, the Council received an update on the FMP consultation schedule and NMFS' plans for preparing a second draft of the Revised Steller Sea Lion Recovery Plan (see NMFS letter dated January 31, 2007 – attached as Item B-7(a)). NMFS informed the Council that a revised recovery plan would be completed in early May 2007 and would be released for a 90-day public review period. When the recovery plan is finalized (estimated to be later in 2007), NMFS intends to continue work on the draft Biological Opinion (BiOp) which is scheduled for completion by June 2008. NMFS also reported that it intends to have the second draft recovery plan peer reviewed by the Center for Independent Experts (CIE).

The Council indicated it would convene a special meeting in early August to review the re-drafted recovery plan, and tasked staff to arrange with the North Pacific Research Board for a peer review of the recovery plan. That special Council meeting is scheduled for August 1-2 for SSC review of the revised recovery plan (through noon on August 2) and August 2-3 for the Council review (starting at 1:00 PM on August 2). All meetings will be at the Downtown Anchorage Marriott Hotel.

On May 21, 2007 NMFS released the second draft of the Revised SSL Recovery Plan for public review and submitted that plan to the CIE for peer review. The News Release and Federal Register Notice of Availability are attached as Item B-7(b). NMFS also posted on their web site the public comments and the peer review comments received on the first draft recovery plan and the agency's responses to those comments. Per the Council's request, staff have arranged for a separate peer review of the recovery plan through the NPRB. The Council's terms of reference for the NPRB review are attached as Item B-7(c). That review will be completed in mid July, just prior to the Council's August 1-3 meeting. The results of the CIE review and the NPRB review will be available at the August meeting. Comments on the second draft recovery plan are due by August 20, 2007.

The Council may wish to discuss an agenda for the special August meeting.

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 the Council's special August meeting in Anchorage. The Executive Summary of this report is provided as Item B-7(d). This report is intended to inform the Council as it reviews the re-drafted SSL recovery plan during its special August 1-3 meeting.

As part of the consultation process, the Council's SSL Mitigation Committee (SSLMC) has developed a Proposal Ranking Tool to screen and rank proposals for changes in SSL protection measures. The PRT has been reviewed and approved by the SSC, and the SSLMC has met and it has scored the proposals it has received. Minutes of the SSLMC's April and May meetings are attached (Item B-7(e)). At its June 19-21 meeting, the SSLMC plans to review the model scores, make any necessary corrections based on feedback from proposers, and prepare a framework for proposal analysis with the PRT and outside the model resources; the SSLMC also will review the second draft SSL recovery plan at that meeting and compare the recovery criteria in this plan with the PRT structure.

B. Humane Society Lawsuit on SSL and NFS Research and Permitting

NMFS has completed the final programmatic EIS on SSL and northern fur seal (NFS) research and released the EIS for a 30-day public review period. The EIS identifies NMFS' preferred alternative and contains the analysis and decision framework the Agency will use when awarding SSL and NFS research grants and issuing permits. NMFS intends to have a Record of Decision by early June, concurrent with completion of a Biological Opinion on the proposed action. Permits should be granted shortly thereafter, allowing SSL and NFS research programs to commence. The Executive Summary which includes a description of the Agency's preferred alternative (Alternative 4) is attached as Item B-7(f).

C. Cook Inlet Beluga Whale

On April 20, 2007 NMFS published in the Federal Register a proposed rule that will designate the Cook Inlet population of beluga whale as endangered under the ESA (see Item B-7(g)). The comment period for the proposed rule ends June 19, 2007. NMFS intends to work on designation of critical habitat for this population during the upcoming year. A map showing the known distribution of Cook Inlet belugas is part of Item B-7(g).

D. Sea Otters

The Southwest Alaska Sea Otter Recovery Team met April 10-11, 2007 in Anchorage to continue work on developing a draft recovery plan for this Distinct Population Segment (DPS) of the northern sea otter. The agenda for that meeting and a list of Recovery Team members is attached as Item B-7(h). The Team plans to meet later in 2007, and hopes to have a draft recovery plan ready for internal review in 2008. Part of the ESA listing process is the designation of critical habitat (CH) for the listed species. In the case of the southwest Alaska DPS, the U.S. Fish & Wildlife Service (USFWS) felt that it could not determine CH at the time of listing. In December 2006, the Center for Biological Diversity (CBD) filed a complaint in court that challenged the agency's failure to designate CH, but on April 9, 2007 the CBD and the Secretary of the Interior reached a settlement. The terms of the settlement require the USFWS to publish in the Federal Register by November 30, 2008 a determination as to whether designation of CH for this DPS is prudent, and if so publish on that date the proposed CH designation. The settlement and court order is attached as Item B-7(i).

E. List of Fisheries

The SSC is scheduled to receive a report from the National Marine Mammal Laboratory (NMML) on the data and analysis procedures used to develop the List of Fisheries (LOF) for 2007. This SSC workshop is primarily focused on the data published in NOAA Technical Memorandum NMFS-AFSC-167 by M.A. Perez (2006). Dr. Robyn Angliss from NMML will be available to the SSC to discuss the Perez (2006) report and answer questions. The LOF for 2008 is expected to be published as a Proposed Rule later this summer and should be available for Council review at its October 2007 meeting.

F. Fisheries Depredation by Killer and Sperm Whales

On October 2-5, 2006, the Vancouver Aquarium Marine Science Center hosted a symposium on the extent to which killer and sperm whales depredate catch from North Pacific commercial fishing gear, and to identify possible methods to reduce fisheries depredation and to limit the spread of depredation to new areas. The Council helped sponsor this meeting and the proceedings will be published soon. A brief summary of the findings of the meeting are provided as Item B-7(j).

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

January 31, 2007

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Stephanie,

We would like to update the North Pacific Fishery Management Council (Council) on the status of the revised Steller Sea Lion Recovery Plan (recovery plan) and the Endangered Species Act (ESA) section 7 consultation for the Fishery Management Plans (FMPs). Based on public comment, NMFS intends to complete a final recovery plan before completing a draft biological opinion on the FMPs. We recognize this strategy differs from that discussed with the Council since last June, when we agreed to develop a draft biological opinion based on the draft recovery criteria set forth in the draft recovery plan.

In January 2007, the Alaska Department of Fish and Game requested that NMFS "not consider adopting the [draft recovery] criteria until the recovery plan has been finalized..." This would allow good public process as NMFS fully considers comments on the draft recovery plan, provides the public and the Council additional opportunity to review and comment on a revised draft recovery plan, and then finalizes the recovery plan prior to preparing the draft biological opinion.

We agree that this approach is prudent, particulary in consideration of recent agency guidance which requires the consideration of the conservation of the species when making adverse modification determinations in biological opinions. Conservation is defined in the ESA as the use of all measures necessary to bring an endangered species to the point that the protections of the ESA are no longer required (i.e., de-listing). Thus, the plan's recovery criteria are important in making determinations in the biological opinion.

We intend, therefore, to complete the recovery plan first and then incorporate the recovery criteria in the biological opinion. Due to the sequential nature, it is not practical to work on these two issues at the same time, thus additional time is needed to complete the documents and to allow for the requested public review. We expect to provide a 60-day public review and comment period on the revised recovery plan by May 2007. This should allow review by the Council's Scientific and Statistical Committee prior to the June 2007 Council meeting. NMFS will consider the additional public comments and then complete the recovery plan. NMFS will then focus on completing the draft biological opinion by the end of 2007. The revised schedule may allow for peer review on the biological opinion before it is released to the public.

We understand that this delay affects the Council's schedule for developing changes to the Steller sea lion protection measures. While NMFS completes the recovery plan, the Steller Sea Lion Mitigation Committee can continue to review and prioritize proposals. The completion of the recovery plan and the biological opinion has been difficult due to the controversial nature of the issues, the need to integrate the public, and the changes to the regulatory definition of adverse modification of critical habitat. We will continue to update you on our progress and appreciate your cooperation and patience as we complete this important work.

Sincerely,

for Robert D. Mecum
Acting Administrator, Alaska Region

NOAA Fisheries
National Marine Fisheries Service
Alaska Region
NEWS RELEASE

P.O. Box 21668, Juneau, Alaska 99802-1668

CONTACT:
Sheela McLean
(907) 586-7032

NMFS 07-AKR
May 21, 2007

NOAA Fisheries Service Seeks Comments on Steller Sea Lion Plan

NOAA Fisheries has announced the release of a Draft Revised Steller Sea Lion Recovery Plan for public review and comment, according to a notice published today in the Federal Register.

"The plan is designed to aid recovery of the Steller sea lion populations listed as endangered in Alaska's western population segment and threatened in the eastern population segment," said Doug Mecum, Acting Administrator of NOAA Fisheries' Alaska Region. "We hope people will take time to read the draft revised plan and give us ideas and comments."

The plan highlights three actions that are especially important to the recovery of the species: (1) maintain adequate fishery conservation measures; (2) design and implement an adaptive management program to evaluate conservation measures; and (3) continue population monitoring and research on the key threats that may be impeding sea lion recovery. The plan also outlines recovery criteria for both populations; recovery criteria are the parameters necessary to down-list or de-list the species.

NOAA Fisheries established a new recovery team in 2001 to develop a strategy for the recovery of the endangered and threatened populations of Steller sea lions. The recovery team was composed of 17 members representing fishery and marine mammal scientists, the fishing industry, Alaska natives, and environmental organizations. The recovery team reviewed the latest scientific and management information available and developed recommendations for NOAA Fisheries. After five years in development, the recovery team submitted the revised plan to NOAA Fisheries with unanimous endorsement by the 17 team members.

NOAA Fisheries released the draft plan in May 2006 for public review and comments. Comments were provided by the Marine Mammal Commission, the State of Alaska, the North Pacific Fisheries Management Council, non-governmental organizations; members of the fishing industry, members of academia and other interested parties. Five independent experts reviewed the plan. NOAA Fisheries reviewed the comments and incorporated recommendations into the Draft Revised Plan.

Due to extensive public interest in this recovery plan, NOAA Fisheries has released the Draft Revised Plan for another round of public review and comments this summer. This will provide the public with an opportunity to review the changes the agency made and to submit further comments prior to release of the final Steller Sea Lion Recovery Plan.

NOAA Fisheries has also scheduled an additional peer review, to be completed by the Center for Independent Experts in June 2007.

The Steller sea lion was listed as a threatened species under the Endangered Species Act on April 5, 1990 due to substantial population declines. In 1997, the Steller sea lion was split into western and eastern distinct population segments. At that time, the western distinct population segment was up-listed to endangered status due to persistent declines, while the status of the eastern segment remained threatened. Recent

surveys showed a population growth rate in the western segment of about 3% per year between 2000 and 2004, the first increase in the population since the 1970s. The western population segment is currently about 44,800 animals. The eastern population segment is currently between 45,000 and 51,000 animals, and has been increasing at 3% per year for about 30 years.

Comments on the Draft Revised Plan must be received by close of business on August 20, 2007.

Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NOAA Fisheries Service, Attn: Ellen Walsh. Comments may be submitted by:

1. E-mail: SSLRP@noaa.gov. Include in the subject line the following document identifier: Sea Lion Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes;
2. Mail: P.O. Box 21668, Juneau, AK 99802;
3. Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska; or
4. Fax: (907) 586–7012.

Interested persons may obtain the Plan for review from the above address or on-line from the NOAA Fisheries website: http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm.

NOAA's National Marine Fisheries Service (NOAA Fisheries Service) is dedicated to protecting and preserving our nation's living marine resources through scientific research, management, enforcement, and the conservation of marine mammals and other protected marine species and their habitat. To learn more about NOAA Fisheries Service in Alaska, please visit our websites at www.fakr.noaa.gov or at www.afsc.noaa.gov.

More News Releases

of the country of origin was filed on behalf of Domex Marketing, Inc., L&M Companies Inc., Nuchief Sales, Inc., Oneonata Trading Corporation, PAC Marketing International, LLC., Rainier Fruit Company and Sage Marketing LLC., "(las Reclamantes)". Union Agricola Regional de Fruticultores del Estado de Chihuahua A.C., filed a notice of motion requesting termination in support of Domex and the others regarding Secretariat File No. MEX-USA-2003-1904-02.

SUMMARY: Pursuant to the Notice of Motion to Terminate the Panel Review and support of that motion, the panel review is terminated as of May 3, 2007. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 15, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7-9662 Filed 5-18-07; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041307C]

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of the Draft Revised Recovery Plan (Draft Revised Plan), dated May 2007, for the western and eastern distinct population segments (DPS) of Steller sea lion (*Eumetopias jubatus*). NMFS is soliciting review and comment on the Draft Revised Plan from all interested parties. Due to continued and substantial public interest in the recovery plan to-date, NMFS is releasing an updated version of the Draft Revised Plan for additional review and written comments.

DATES: Comments on the Draft Revised Plan must be received by close of business on August 20, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- E-mail: *SSLRP@noaa.gov*. Include in the subject line the following document identifier: Sea Lion Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Juneau, AK.
- Fax: (907) 586 7012.

Interested persons may obtain the Draft Revised Plan for review from the above address or online from the NMFS Alaska Region website: *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, (907 586 7235), e-mail *kaja.brix@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans are guidance documents that describe the actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Development and implementation of a recovery plan helps to ensure that recovery efforts utilize limited resources effectively and efficiently. The ESA requires the development of recovery plans for listed species, unless such a plan would not promote the recovery of a particular species. The ESA requires that recovery plans incorporate the following: (1) Objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time and costs required to implement recovery actions. NMFS will consider all substantive comments and information presented during the public comment period prior to finalizing the Steller Sea Lion Recovery Plan.

NMFS' goal is to restore endangered and threatened Steller sea lion (*Eumetopias jubatus*) populations to levels at which they are secure, self-sustaining components of their ecosystems and no longer require the protections of the ESA. The Steller sea lion was listed as a threatened species under the ESA on April 5, 1990 (55 FR 12645), due to substantial declines in the western portion of the range. Critical habitat was designated on August 27, 1993 (58 FR 45269), based on the locations of terrestrial rookeries and haulouts, the spatial extent of foraging trips, and availability of prey. In 1997, Steller sea lions were reclassified as two DPSs under the ESA, a western DPS and an eastern DPS, based on demographic and genetic dissimilarities (62 FR 24345, 62 FR 30772). Due to a persistent population decline, the western DPS was reclassified as endangered at that time. The increasing eastern DPS remained classified as threatened. Through the 1990s, the western DPS continued to decline. Then between 2000 and 2004, the western population showed a growth rate of approximately three percent per year — the first recorded increase in the population since the 1970s. Based on recent counts, the western DPS is currently about 44,800 animals. The eastern DPS is currently between 45,000 and 51,000 animals and has been increasing at a rate of approximately three percent per year for 30 years.

The first Steller sea lion recovery plan was completed in December 1992 and encompassed the entire range of the species. However, the recovery plan became obsolete after the split into two DPSs in 1997. By that time, nearly all of the recovery actions recommended in the original plan were completed. In 2001, NMFS assembled a new recovery team to update the plan. The team was

comprised of members representing marine mammal and fishery scientists, the fishing industry, Alaska Natives, and environmental organizations. The recovery team completed a draft revision in February 2006, then solicited peer review on the draft recovery plan in accordance with NMFS' 1994 peer review policy. The team requested review from five scientists and managers with expertise in recovery planning, statistical analyses, fisheries, and marine mammals. In response to reviewers' comments, the team clarified the recovery criteria, added delisting criteria for the western DPS, and further refined priorities and recovery actions. In March 2006, the Team submitted the revised plan to NOAA Fisheries with unanimous endorsement from the 17 Team members.

In May 2006, NMFS released the draft Steller Sea Lion Recovery Plan for public review and comment (71 FR 29919). On July 20, 2006, NMFS extended the customary 60-day comment period until September 1, 2006 (71 FR 41206) to provide additional time for public review and comments. NMFS received comments from 18 individuals and organizations during the 100-day comment period. We reviewed these comments and incorporated recommendations into the Draft Revised Plan. A summary of public comments and NMFS' formal response to these comments are available online at *http://www.fakr.noaa.gov/*.

Due to extensive public interest and the controversial nature of this recovery plan, NMFS is releasing the Draft Revised Plan for another round of public reviews and comments. This will provide the public an opportunity to review changes made based on earlier public input and to provide further comments prior to release of the final Steller Sea Lion Recovery Plan.

Overview

The Draft Revised Plan contains: (1) A comprehensive review of Steller sea lion ecology, (2) a review of previous conservation actions, (3) a threats assessment, (4) biological and recovery criteria for downlisting and delisting, (4) actions necessary for the recovery of the species, and (5) estimates of time and costs for recovery.

The threats assessment concludes that the following threats to the western DPS are relatively minor: Alaska Native subsistence harvest, illegal shooting, entanglement in marine debris, disease, and disturbance from vessel traffic and scientific research. Although much has been learned about Steller sea lions and the North Pacific ecosystem, considerable uncertainty remains about the magnitude and likelihood of the following potential threats (relative impacts in parenthesis): competition with fisheries (potentially high), environmental variability (potentially high), killer whale predation (medium), incidental take by fisheries (low), and toxic substances (medium). In contrast, no threats were identified for the eastern DPS. Although several factors that affect the western DPS also affect the eastern DPS (e.g., environmental variability, killer whale predation, toxic substances, disturbance), these threats do not appear to be limiting recovery of the population at this time.

The Draft Revised Plan identifies an array of substantive actions that will foster recovery of the western DPS by addressing the broad range of threats. It highlights three actions (detailed below) that are especially important to the recovery program for the western DPS:

1. *Maintain current fishery conservation measures:* After a long-term decline, the western DPS appears to be stabilizing. The first slowing of the decline began in the 1990s, which suggests that management measures implemented in the early 1990s may have been effective in reducing anthropogenic effects (e.g., shooting, harassment, and incidental take). The apparent population stability observed in the last six years appears to be correlated with comprehensive fishery management measures implemented since the late 1990s. Therefore, the current suite of management actions (or their equivalent protection) should be maintained until substantive evidence demonstrates that these measures can be altered without inhibiting recovery.

2. *Design and implement an adaptive management program to evaluate fishery conservation measures:* A scientifically rigorous adaptive management program should be developed and implemented. A well-designed adaptive management plan has the potential to assess the relative impact of commercial fisheries on Steller sea lions and distinguish the impacts of fisheries from other threats (including killer whale predation). This program will require a robust experimental design with replication at appropriate temporal and spatial scales. It will be a challenge to construct an adaptive management plan that is statistically sound, meets the requirements of the ESA and can be implemented in a practicable manner.

3. *Continue population monitoring and research on the key threats potentially impeding sea lion recovery:* Estimates of population abundance and trends, spatial distribution, health, and essential habitat characteristics are fundamental to Steller sea lion management and recovery. Current knowledge of the effects of primary threats on these parameters is insufficient to determine their relative impacts on species recovery. Focused research is needed to assess the effects of threats on sea lion population dynamics and identify suitable mitigation measures.

Criteria for reclassification of the eastern DPS and western DPS of Steller sea lion are included in the Draft Revised Plan. In summary, the western DPS of Steller sea lion may be reclassified from endangered to threatened status when all of the following have been met: (1) Counts of non-pups in the U.S. portion of the DPS have increased for 15 years (on average); (2) the population ecology and vital rates in the U.S. region are consistent with the observed trend; (3) the non-pup trends in at least five of the seven sub-regions are consistent with the overall U.S. trend, and the population trend in any two adjacent sub-regions can not be declining significantly; and (4) all five listing factors [as described in section 4(a)(1) of the ESA] are addressed.

The western DPS of Steller sea lion may be delisted when all of the following conditions have been met: (1) Counts of non-pups in the U.S. portion of the DPS have increased at an average annual rate of three percent for 30 years (i.e., 3 generations); (2) the population ecology and vital rates in the U.S. region are consistent with the observed trend; (3) the non-pup trends in at least five of the seven sub-regions are consistent with the overall U.S. trend, the population trend in any two adjacent sub-regions can not be declining significantly, and the population trend in any single sub-region can not have declined by more than 50 percent; and (4) all five listing factors are addressed.

The eastern DPS of Steller sea lion may be delisted when all of the following have been met: (1) The population has increased at an average rate of three percent per year for 30 years (i.e., three generations); (2) the population ecology and vital rates are consistent with the observed trend; and (4) all five listing factors are addressed.

Time and costs for recovery actions for the western DPS are estimated at $93,840,000 for the first 5 fiscal years and $430,425,000 for full recovery. The recovery program for the eastern DPS will cost an estimated $150,000 for the first year and $1,050,000 total, including 10 years of post-delisting monitoring.

Public Comments Solicited

NMFS solicits written comments on the draft Revised Recovery Plan. All substantive comments received by the date specified above will be considered prior to final approval of the Plan.

Authority: Section 4(f) of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: May 16, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9755 Filed 5–18–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648-XA22

Fisheries of the Northeast Region; Overfished Determination of Winter Skate

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

ACTION: Notification of overfished determination.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that winter skate is overfished. NMFS notified the New England Fishery Management Council (Council) of its determination by letter. The Council is required to take action within 1 year following NMFS notification that overfishing is occurring or a stock is approaching overfishing, a stock is overfished or approaching an overfished condition, or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS sends written notification to fishery management councils when overfishing is occurring or a stock is approaching overfishing; a stock is overfished or approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. On February 20, 2007, the NMFS Northeast Regional Administrator sent a letter notifying the Council that winter skate is overfished.

A copy of the notification letter sent to the Council for the aforementioned determination is available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm.*

Within 1 year of a notification under Magnuson-Stevens Act sections 304(e)(2) or (e)(7), the respective Council must take remedial action in response to the notification, to end overfishing if overfishing is occurring; rebuild an overfished stock or stock complex to the abundance that can produce maximum sustainable yield within an appropriate time frame; prevent overfishing from occurring if a stock is approaching overfishing; and/or prevent a stock from becoming overfished if it is approaching an overfished condition (see implementing regulations at 50 CFR 600.310(e)(3)). Such action must be submitted to NMFS within 1 year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations.

Dated: May 16, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–9753 Filed 5–18–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 29, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2528 Filed 5–17–07; 11:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 8, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2529 Filed 5–17–07; 11:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 15, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2530 Filed 5–17–07; 11:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 22, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2531 Filed 5–17–07; 11:21 am]

BILLING CODE 6351–01–M

North Pacific Fishery Management

Stephanie Madsen, Chair
Chris Oliver, Executive Director

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Visit our website: http://www.fakr.noaa.gov/npfmc

MEMORANDUM OF UNDERSTANDING
for
Independent Review of Revised Draft Steller Sea Lion Recovery Plan

North Pacific Fishery Management Council MOU
#2007-01

BETWEEN:

North Pacific Fishery Management Council, represented by Mr. Chris Oliver, Executive Director, and the North Pacific Research Board, represented by Dr. Clarence Pautzke, Executive Director.

BACKGROUND:

The North Pacific Fishery Management Council requires that an independent group of experts conduct a review of the National Marine Fisheries Service's second draft of the Revised Steller Sea Lion (SSL) Recovery Plan (Plan). The Council is contracting with the North Pacific Research Board to conduct this review according to the terms outlined below. Preparation of this Plan is required under the Endangered Species Act (ESA) and serves to guide NMFS in its future management and conservation of SSLs and in particular recommends actions the Agency should take to cause the SSL population to increase in size to a level that it could be downlisted or delisted from the list of endangered species.

In 2002, NMFS organized a SSL Recovery Team that prepared a draft Plan. This new Plan was based on new information on SSLs and their habitat, and reflected the current view of the SSL stock structure. NMFS accepted the draft Plan in early 2006, and released it for public review. The Council and its Scientific and Statistical Committee (SSC) reviewed the draft Plan, as did members of the public. NMFS has received these comments, some of which suggested some extensive revisions to the plan. Based on the SSC comments, comments received from the public, and its own review, and because of the importance of this Plan as a guidance document for future management of SSLs in Alaska, the Council asked NMFS to prepare another draft of the Plan. NMFS agreed to this request, and is preparing another draft of the Plan which it will release for another round of public review, including another Council review, in early May.

As part of the process for preparing this revised draft Plan, NMFS intends to have the Plan reviewed by the Center for Independent Experts (CIE). The Council also wishes to conduct a review of the revised draft Plan. The difference between how these two reviews would be conducted is what has partly prompted the Council to seek a separate review. The CIE review process involves a blind review, with reviewers not revealed to the public and unavailable for questions on their review. The Council desires a review that is more public, with opportunity for SSC and Council discussion with the reviewers of their comments on the revised draft Plan.

STATEMENT OF WORK:

The Council has asked the North Pacific Research Board (NPRB) if it can arrange for this review by selecting the reviewers, administering the review process, and ultimately facilitating the panel's final report for the Council. Reviewers chosen by NPRB will be at the discretion of NPRB but should be individuals with strong expertise in marine mammal population dynamics, endangered species management, wildlife ecology, or similar background. It may be helpful if one or more reviewers were familiar with marine mammal foraging and nutrition, and one or more familiar with North Pacific commercial fisheries. It is expected that three individual experts would be empanelled to conduct this review. NPRB may choose to have individuals review the draft revised Plan separately, and then convene together to discuss their individual reviews and compile a consensus report. If reviewers cannot attain consensus on all points raised in their reviews, this should be documented in the report.

The review should be completed by mid July 2007 so as to allow time for Council, SSC and public review and preparation for the special August 2007 Council meeting. The Council will transfer funds necessary for this process to NPRB, and will not be involved in the management or conduct of the review. Then, at the special August Council meeting, a representative of the panel will be available to present their report and discuss it with the Council and its SSC. Public comment will be taken at that Council meeting.

The Council will provide copies of the revised draft Plan to NPRB as soon as it is released for public review (anticipated to be early May 2007). NPRB will then arrange distribution of the Plan to the reviewers and commence the review process.

Reviewers should first read the revised draft Plan and familiarize themselves with the main issues: the Plan is a prescription for recovery of the eSSL and wSSL populations, and as such presents the "case" for what measures should be taken to rebuild these populations to a level the Plan describes as sufficient to either downlist or delist both populations (the eSSL is threatened, so a downlisting is the only action necessary for that population unit).

The Council's goal is a thorough, scientifically-based, independent, and open and transparent review process. The following questions (taken directly from the terms of reference for the CIE review) should be the focus for the review panel. Additional sub questions the NPRB review panel should include in its review are listed below each CIE question and are italicized.

1. Does the Plan thoroughly describe what is known about potential threats to both the eastern and western populations of Steller sea lion? Are there additional significant threats to the species? Does the evidence presented in the Plan support the threats assessment?

   1a. Are the threats as described in the Plan compelling threats to the reviewer; does the evidence fully support listing all of these as threats?

2. Is the ecological and biological information presented in the Plan adequate, thorough, and scientifically defensible?

3. Does the Plan adequately present an ecologically and biologically defensible recovery strategy for the western population of Steller sea lion? Describe any shortcomings in the recovery strategy.

   3a. Are there other interpretations of the ecological and biological information, and the recovery strategy derived from these interpretations, that might hold equal merit to the interpretations presented in the plan?

4. Are the recovery actions described within the Plan appropriate to meet recovery goals? Are the recovery actions consistent with the Steller sea lion life history information, population dynamics,

and threats assessment presented in the Plan? Are there other recovery actions that have not been included in the Plan that should be included to achieve recovery?

4a. Is there sufficient evidence in the scientific literature, as presented in the plan, to suggest that the recommended recovery actions will work?

5. Are the recovery tasks in the Plan's Implementation Schedule appropriately prioritized to facilitate recovery?

6. Does the information in the Plan appropriately support the recovery criteria described in the Plan? Are the recovery criteria consistent with and do they meet the requirement of the Endangered Species Act (ESA) to ensure the conservation of the species (i.e. recovery and ultimate delisting: "conservation" as defined in the ESA [16 USC Section 1532(3)])?

In addition to these questions that have been posed to the CIE, the Council would like the NPRB review panel to answer this question:

Does the Plan fairly weigh competing hypotheses on the causes of the decline, and/or lack of recovery, of the western population of Steller sea lion?

TERMS AND DELIVERABLES:

Funds available for this review panel, including necessary travel expenses, are not to exceed $50,000. NPRB will manage the project and facilitate as necessary the panel's activities and preparation of a report on the panel's findings. The report should be completed and provided to the Council offices by July 20, 2007. The Council will make copies for the Council and SSC and for public distribution. A representative of the review panel will be required to attend a meeting of the Council and its Scientific and Statistical Committee, and provide a presentation of their report finding, August 1-3, 2007, in Anchorage, Alaska.

AGREED

Chris Oliver
Executive Director, NPFMC_____
Date_____

Clarence Pautzke
Executive Director, NPRB_____
Date_____

REVIEW AND COMPARISON OF RECOVERY CRITERIA IN THE 2006 DRAFT REVISED STELLER SEA LION RECOVERY PLAN

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EXECUTIVE SUMMARY

This review was prepared to assist the North Pacific Fishery Management Council compare proposed recovery criteria in the 2006 Draft Revised Steller Sea Lion Recovery Plan with recovery criteria developed and implemented for other species. Eleven recovery plans (six from NMFS and five from USFWS) were included in the review, depending on available information in the plan and relevance to the SSL plan. Three of the plans were for species or sub-species that have been removed or proposed for de-listing from the ESA list (gray whale, Greater Yellowstone grizzly bear, and Northern Rocky Mountain gray wolf). Each plan was reviewed and pertinent information summarized in text and table format. Summaries of each recovery plan were presented in Appendix 1 (species under NMFS jurisdiction) or Appendix 2 (species under USFWS jurisdiction).

Results indicate that recovery criteria grouped into three categories: (1) those that included increasing or decreasing rates of population change by geographic areas; (2) those that included changes in the number of animals over a prescribed period and area; and (3) a mix of categories one and two. The 2006 Draft Revised Steller Sea Lion Recovery Plan was in the first category; the recovery criteria in the SSL plan were consistent with other criteria in plans in the first category and published by NMFS and the USFWS (i.e., for killer whale, fin whale, right whale, and manatee). Recovery criteria in the SSL recovery plan requiring rates of population increase over time in 5 of 7 regions were not unusual, compared to other plans in category 1. The SSL Recovery Plan included recommendations from the NMFS Quantitative Working Group for developing the listing or de-listing criteria.

Part of the review was to determine if recovery plans provided a rationale or scientific justification for the recovery criteria and recovery tasks. Some of the older plans (e.g., the gray wolf recovery plan which is 20 years old) did not contain the same amount of information or justification included in recent plans. However, in that plan and in the other ten recovery plans there was sufficient rationale and background to justify the proposed recovery criteria and the tasks needed to meet those criteria.

Habitat degradation was important as contributing to the species status or lack or recovery in all plans reviewed. Excessive mortality and low survival were contributors to reduced status in most (but not all) plans. Food limitation, disease/contaminants, or over harvesting were contributors to species decline or status in half or fewer of the plans. A PVA was used as an analytical tool in six of the ten plans (including the SSL plan).

Existing legislation was adequate to enhance the recovery and subsequent de-listing of gray whales, whereas numerous management and conservation actions were needed to enable the delisting of Northern Rocky Mountain gray wolves and Greater Yellowstone grizzly bears.

North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
April 17-19, 2007
National Marine Fisheries Service, Juneau

Minutes

The Steller Sea Lion Mitigation Committee (SSLMC) convened in Juneau at the offices of the National Marine Fisheries Service on April 17-19, 2007. The SSLMC's Subcommittee on Proposal Scoring met on April 16 to develop recommendations on a procedure for scoring proposals. Their report is provided as a part of these minutes. Committee members present were: Larry Cotter (Chairman), Jerry Bongen, Julie Bonney, Sam Cotten, Ed Dersham, John Gauvin, John Henderschedt, Dan Hennen, Sue Hills, Frank Kelty, Terry Leitzell, Steve MacLean, Max Malavansky Jr, Mel Morris, and Art Nelson. Also present were Mike Turek, (ADF&G), Bill Wilson (Council staff); Doug DeMaster (NMFS AFSC); Kristin Mabry and Melanie Brown (NMFS AK Region staff); John LePore (NOAA General Counsel AKR); and several members of the public. Chairman Cotter noted that with the recent changes in composition of the Alaska Board of Fisheries (BOF), Art Nelson has been re-appointed to the SSLMC as a member to represent CDQ group interests, and Mel Morris has been appointed to represent the BOF. The primary focus of this meeting was to develop a process for scoring proposals and their corresponding status quo with the Proposal Ranking Tool (PRT), receive presentations on the proposals from the proposers and define any additional questions on each proposal, and set a future SSLMC meeting schedule in light of recent changes in the SSL Recovery Plan and FMP consultation schedule.

Chairman Cotter reviewed the agenda (attached), the work schedule for the coming several days, and Bill Wilson reviewed the handout materials provided to each committee member. Cotter reminded the SSLMC that the next meeting, May 7-10 in Seattle, will focus on scoring the proposals and on receiving new scientific information on SSLs, killer whale predation, and other new papers recently published.

The minutes of the SSLMC's January 8-9, 2007 meeting were reviewed and approved. Wilson provided an overview of the proposed schedule for revising the SSL draft Recovery Plan and continuing the FMP consultation and preparation of a draft Biological Opinion (BiOp). As it now stands, NMFS will prepare another draft of the recovery plan by early May. NMFS will then submit the revised draft plan to the Center for Independent Experts (CIE) for peer review. After completing the final recovery plan in late 2007, NMFS will begin anew on the consultation process and develop a draft BiOp on the status quo by spring 2008. At that time the Council may wish to submit a recommended action (recommended changes in SSL protection measures) and NMFS will revise the BiOp to include the proposed action. This revised draft BiOp would be available for review by fall 2008; a final BiOp would be prepared by early 2009. With an accompanying NEPA analysis process, the completion of a final BiOp and the approval of a package of changes to SSL protection measures, if any, would be completed such that new regulations are scheduled for completion in July 2009.

The SSLMC discussed the implications of this new schedule. Some questioned the amount of time it will take to have any new regulations in place, and how the State of Alaska may view this schedule. It was noted that the State suggested completion of the recovery plan prior to continuing with the consultation, so the State is aware of the revised schedule. Dr. DeMaster also noted that with new scientific information now available on SSL productivity, SSL predation by killer whales, SSL nutrition, and other information, NMFS believes it prudent to develop sound recovery criteria before continuing with development of a draft BiOp. Thus, reemphasizing the completion of the recovery plan is an appropriate action to take now.

Chairman Cotter noted that the SSLMC needs to continue with its work, complete the PRT, develop a procedure for ranking proposals with the PRT, and perhaps then stand down until a time in the future when the Committee may be asked to develop a recommendation for a proposed action.

Cotter also noted that the SSLMC will receive the revised draft recovery plan at its June meeting, and conduct a review of that plan. The SSLMC provides a good forum for public review and for assisting the public in understanding the revised recovery plan and the proposed recovery criteria. Some noted that the recovery plan will include new scientific information and how that information informs the agency in its development of SSL recovery criteria; this perspective will help the SSLMC as it develops any future proposed changes to SSL protection measures. DeMaster noted that, while there is little consistency in what constitutes appropriate recovery criteria for a listed species among NMFS and the U.S. Fish & Wildlife Service, the goal is to avoid jeopardy and adverse modification; the jeopardy determination is linked to the survival of a species while adverse modification is linked to the recovery of a species. These two determinations are key factors in the development of recovery criteria.

Review of Study of Direct Mortality to SSLs by Humans

Mike Turek, ADF&G, presented the results of a study conducted by ADF&G's Subsistence Division on the sources of direct mortality to SSLs from human actions. This study was supported by the Council and the North Pacific Research Board, and was designed to shed more light on mortality of SSLs in the late 20th Century to inform our understanding of the causes for the decline in this same time period. Turek summarized information on SSL mortality from commercial hunting, domestic commercial fisheries and foreign trawl fisheries, the joint venture fisheries of the 1980s, and intentional shooting. Turek noted many instances of significant mortality, but overall concluded that human-caused direct mortality was unlikely a *primary* cause of the SSL decline but it could have contributed. A draft report from this study will be out in June and a final report later this summer. Some public comment noted that some sectors of the fishing industry did not contribute to this study.

Proposal Ranking Tool Review by the SSC

Wilson reviewed the SSC minutes from their February 2007 meeting. The SSC has agreed that the PRT is ready to be used for ranking proposals, but that the SSLMC should develop a framework for the overall proposal evaluation process. The SSC also

recommended that as the SSLMC uses the PRT, it documents how it is used and any issues that arise as it is used, and bring periodic updates to the SSC.

Report from Subcommittee on Proposal Scoring

Dr. Hennen reported on the work completed by the subcommittee (Dan Hennen, Doug DeMaster, Kristin Mabry, Sue Hills, Bill Wilson) during its meeting of April 16; Melanie Brown assisted the subcommittee. The subcommittee was tasked with developing a recommended procedure for "dissecting" a proposal into its components that can be scored using the PRT's hierarchy. Dr. Hennen noted that the PRT contains three "arms" – and the subcommittee recommends that when scoring a proposal, these three questions will be the initial step in defining what elements of the PRT the proposal will trigger:

1. Does the proposal shift TAC or change the length of the season?
2. Does the proposal open or close areas proximate to SSL sites?
3. Does the proposal shift TAC from one fishery to another?

Dr. Hennen noted that the third arm is the least useful, as it is only used when a proposal shifts TAC from one fishery to another. John Henderschedt noted that this arm might be useful in comparing two proposals that have close scores.

Dr. Hennen walked through several proposal examples and how the subcommittee would use the PRT to score both the proposal and its status quo. Some proposals were divided into sub proposals, particularly those that may affect multiple seasons. For those proposals that offered a tradeoff action, only the proposal would be scored; the subcommittee did not offer a recommendation on how to treat a tradeoff proposal. The SSLMC needs to decide how to handle some of these situations.

NOTE: This subcommittee met again at the end of the SSLMC meeting to revisit the approach to inputting proposals to the PRT. The subcommittee added BOF proposals 6, 182, and 185 to the list of proposals to be scored. The subcommittee also reviewed the proposal presentations from the last two days, and updated the list of elements in the PRT that would be triggered by the proposed actions, and it revisited the definition of season and fishery duration. Additional updating of the procedures will be developed by the subcommittee prior to the next SSLMC meeting. It was agreed that the subcommittee will meet Monday May 7, 8:30 am to noon, to review these procedures and prepare a presentation for the full SSLMC.

Proposal Presentations

Proposers gave an overview of their proposals. This provided an opportunity for the SSLMC to ask questions and clearly understand the proposals. The following is a brief overview of main points presented or discussed for each proposal.

Proposal 3 – Paul Soper (Trident)
Proposal is to start B season for BSAI P. cod pot C/P August 15 instead of September 1 (status quo). It would be safer to fish earlier in the B season and more efficient for this fleet. Another benefit is these vessels can more quickly enter the crab fishery after completing the cod fishery. This could affect up to 8 vessels. No conflicts with other fisheries appears likely; C/P fleet fishes more to the north from the C/V pot cod fleet.

Proposal 26 – Brent Paine (UCB)
Proposal is to change current 3 seasons into 2 seasons for the BSAI C/V cod trawl fishery. The proposed split would be 89/11 for the A/B seasons, as opposed to the current 74/11/15 A/B/C seasons. The fishery in the A season is higher value, thus providing economic benefits. Also, part of the C season TAC cannot be harvested and thus is rolled to the fixed gear sector. The proposal would move all of the C season TAC into the A season.

Proposal 27 – Brent Paine (UCB)
Proposal is to change split in BSAI pollock TAC from 40/60 A/B seasons to 45/55 for both CDQ and non-CDQ fisheries. Benefits are primarily economic; value of pollock in A season is higher. An offsetting option would be to restrict the harvest of the additional 5 % to outside SSL CH. Possible effect of proposal is a shorter fishing year overall if B season is shortened because of less TAC but fleet fishes A season harder (same number of days as status quo but effort could be higher because of increased value of the TAC). Need information on value of a mt of pollock in A season versus the value of a mt of B season pollock.

Proposal 28 – Brent Paine (UCB)
Proposal is to extend the BSAI pollock B season by 1 month – end the season November 30 instead of current October 31. It is becoming more difficult to harvest B season because of long run times to the grounds; this gives the fleet more time to harvest the quota. It also could give the fleet a jump on the upcoming winter roe fishery. This could increase Chinook salmon bycatch rates as these bycatch rates tend to increase in winter – but this also could reduce chum salmon bycatch rates which tend to go down. This also could increase cod deliveries (MRA cod) into later in the year than currently occurs.

Proposal 29 – Brent Paine (UCB)
Proposal would start BSAI pollock A season fishery 5 days earlier – change start date from January 20 to January 15. Objective is to capitalize on value of roe, which is maturing earlier, thereby facilitating the harvesting of a higher proportion of high value product with larger economic returns. An option is to also close the A season 5 days earlier, retaining the overall same season length – although not necessarily retaining the same actual fishing time. It is unknown what the current view of the importance of the November 1 to January 20 period when all trawl fishing is closed as a SSL protection measure.

Proposal 1 – Paul MacGregor (APA)
Proposal is similar to Proposal 29 but asks for an earlier start date for the BSAI pollock A season fishery. Proposal would change start date from January 20 to 10-15 days earlier. Objective is to harvest a greater proportion of high value pollock roe which seems to be at peak quality early in January. Proposal includes cutting the A season shorter by the same amount of days it starts earlier. Sixty % of the value of the BSAI pollock fishery comes from the first 40% of the quota (the A season). Amendment 80 should alleviate some concerns over effects of this proposal on other fisheries.

Proposal 2 – Paul MacGregor (APA)
Similar to Proposal 27, this proposal would change the A/B season TAC split for the Bering Sea pollock fishery. However, this proposal would framework the split such that it remains status quo (40/60) at Bering Sea pollock TACs of >1.3 million mt but reverts to 45/55 at TACs ≤ 1.3 million mt. This would help optimize the harvest of high value roe pollock when TACs are lower; the capacity of the fleet would be easier to optimize when TACs are lower and the fleet has more "time" to use a harvest strategy that allows them to harvest the maximum amounts of high value roe-bearing fish.

Proposal 9 – Jerry Bongen (UFMA)
Proposal would change the BSAI cod pot C/V ≥60' sector apportionment from the current 51/49 (under Amendment 85) to 80/20. Right now, the effect of Amendment 85 is an increase in the B season allocation but a freeze on the A season allocation. B season cod are more difficult to harvest (regime shift?).

Proposal 13 – Frank Kelty (UNFM)
Proposal would increase the cod harvest cap in the Bogoslov exemption area near Unalaska Island for the C/V longline ≤60' and jig sectors from the current 113 mt cap to an unspecified amount. Mr. Kelty recommends that 0.5% of the BSAI cod TAC be the formula for setting the exemption area amount. There is an increasing interest among local fishermen to fish in this area (less fuel, safer) and a higher cap is needed. This will affect up to 4 vessels and is a very small amount of the overall BSAI cod TAC. (At the June 2007 meeting, added to this proposal is ≤60' pot vessels as legal gear for harvest in the exemption area.)

Proposal 7 – John Gauvin (H&G Environmental Workgroup)
Proposal would shift management of the Aleutian Islands Atka mackerel Area 542 fishery from platoon to co-op management. Amendment 80 approved co-ops for this fishery. Under this proposal, these coops would take over management of the 542 fishery to retain the overall effect of platoon management: limits on amounts of fish harvested from within SSL critical habitat areas. Co-ops would limit numbers of fishing vessels allowed into subareas and thus regulate the harvest in these subareas. The proposal also eliminates the proportion of inside/outside CH harvest limits of 60/40 and replaces these limits with a 70/30 limit. It also would remove the restriction on concurrent mackerel and cod fishing inside CH west of 178 degrees. A suggestion is that the proposal include a comprehensive change in management in all areas (i.e. include 541 and 543 in the proposal).

Proposal 8 – John Gauvin (H&G Environmental Workgroup)
Proposal would adjust the trawl exclusion zone around Seguam Island area to allow Atka mackerel fishing closer to shore. Currently this rookery is closed to 20 n mi but the proposal would be to allow fishing to 10 n mi. The open area would be adjusted to retain complete closure of the Seguam foraging area. Recently, industry agreements are such that a higher TAC is apportioned to the western Aleutians and therefore some additional fishing opportunity would allow the fleet to harvest Atka mackerel more in line with available biomass distributions in the area. Also, FIT studies suggest this species tends to remain in small home ranges, and thus restricting fishing to outside 20 n mi may result in harvesting some parts of the stock heavily (those whose home ranges are only in areas

currently fished). The implication is that opening more area would distribute the harvest effort to a larger area (areas inside 20 and outside 20) and as a consequence put lower pressure on discrete groups within the overall population. The objective is to fish proportionate to available biomass; the proposers suggest consulting with the FIT group to best devise an appropriate closed zone for Atka mackerel in this area. A trade-off is suggested – closing an area in Area 543 to compensate for the proposed open areas, but the proposers suggest working with NMFS to find an appropriate area in 543 that could be excluded from fishing for Atka mackerel and that would provide optimal benefit to SSLs (e.g. closing an area of declining SSL numbers).

Proposal 18 – Mike Alfieri (W GOA Fishermen)
Proposal would be in Area 610 affecting the cod trawl fishery. SSL measures have closed productive cod fishing areas that also have safe refuge areas nearby. Proposal is to open area around Chernabura Island, Jan 20-June 10, so that the area between Sagai Island and Bird Island is available to fishing. A piece-of-pie-shaped opening would be acceptable – in the area NW of Chernabura. An earlier ending date, say in March, would be an acceptable part of the proposal also.

Proposal 12 – Sam Cotten (AEB)
Proposal would change the Jude Island 20 n mi closure to pollock trawling to a 10 n mi closure. Objective is to allow fishing in outer Pavlov Bay. An option is to only open a piece-of-pie-shaped area that would encompass the area NW of Jude Island and outer Pavlov Bay.

Proposal 10 – Sam Cotten (AEB)
Proposal is to change the cod trawl 60/40 TAC split in Area 610 to a 100/0 split in the A season starting Jan 1, including the State parallel fishery. It is difficult to harvest the 40% in the B season because cod disaggregate and weather is poor. This proposal relates to BOF Proposal 182 as well which seeks to apportion 50% - instead of the current 25% - of the Federal ABC into State waters in the W GOA. This proposal is on hold by the BOF – will be discussed by the SSLMC later in this meeting. Reference the NMFS January 31, 2007 letter to the BOF for more insights into Proposal 182 and its effects on SSLs.

Proposal 11 – Sam Cotten (AEB)
Proposal would change the current apportionment of TAC in the Area 610 pollock trawl fishery to put more TAC into the A and B seasons when economic return will be higher. More vessels could be attracted to the fishery as a result. Options include setting trip limits or daily limits. It was noted that, currently, the area apportionments are related to projected biomass levels and TACs are set accordingly. The result of the proposal would be higher fishing rates earlier in the year and possibly an overall shortened season. Some concern was expressed if this fishery attracted vessels from other parts of the GOA.

Of the three proposals from the AEB, Mr. Cotten noted that the 60/40 split change was the primary concern.

Proposal 19 – Max Malavansky, Jr. (St. George Traditional Council)
Proposal is to enlarge the current trawl closure at Dalnoi Point on St. George Island to 20 n mi (currently it is closed 0-3 n mi). This would provide more protection for an

increasing SSL population at this haulout. Haulout is currently used by many hundreds of SSLs, some with brands from other AI regions and Russia and some are weaning juveniles and nursing females; there have been sightings of California sea lions here also. Proposers suggest these SSLs primarily rely on pollock, as well as cod and squid, for their diet; a larger trawl closure could reduce competition for these food sources.

Proposal 21 – Chuck McCallum (Chignik Marketing Association)
Proposal would affect the current 20 n mi closure to jig and pot cod fishing at Sutwik Island. Desire to open this area to 3 n mi. This is a haulout for SSLs, but the fishery would involve only 4 vessels that fish slowly. Although not stated in the written proposal, proposers suggest limiting vessel participation to those ≤60 ft LOA.

Proposal 20 – Chuck McCallum (Chignik Marketing Association)
Proposal is to open to the beach jig and pot cod fishing at Spitz Island (currently closed 0-3 n mi). This SSL haulout is used by very few if any SSLs, and the suggestion is that this closure is not needed given the very low usage of the haulout.

Proposal 4 – Thorn Smith (NPLA)
Proposal is to allow H&L C/P cod fleet to harvest an A/B season split of 70/30. The current split is 60/40 but will be 51/49 when Amendment 85 starts. Cod are more valuable and easier to harvest early in the year, and this would give the fleet more efficiency and more economic value from the catch. The proposal includes a provision that the additional fishing above status quo in the A season would be restricted to outside SSL CH. Benefits include reduced seabird incidental take, reduced halibut bycatch, a higher harvest of more valuable cod, and improved safety since fishing in October can be more dangerous.

Proposal 14 – Julie Bonney (AGDB, ADA, W GOA Fishermen)
Proposal is to aggregate seasonal pollock quotas when TACs are small. Aggregate the A and B seasons or the C and D seasons into single season TACs when the individual allocations to a season are 3000 mt or less (this would create up to a 6000 mt combined A&B season TAC or a combined 6000 mt C&D TAC for the C GOA). This would create a more efficient fishery.

Proposal 15 – Julie Bonney (AGDB, ADA)
This proposal provides protection for small vessels in poor weather. Proposal is to open to trawling for pollock areas around Cape Ugat to 3 n mi (currently closed 0-10 n mi). This would provide more fishing opportunity to small trawlers in this part of Shelikof Strait when weather is poor, as they can hide in nearby bays yet still have access to pollock fishing areas near this Cape.

Proposal 16 – Julie Bonney (AGDB, ADA, W GOA Fishermen)
Proposal would change the pollock trawl C season in C GOA to open on September 1 from the current August 25. This would alleviate conflicts with the pink salmon processing activities in Kodiak. It would shorten the overall C season.

Proposal 17 – Julie Bonney (AGDB, ADA, AEB, UFMA, W GOA Fishermen)
This is a GOA-wide proposal to change the 60/40 cod split for all gear to improve ability of all the fleets to harvest cod more effectively and efficiently. There would be less cod left in the water (from the B season) and more revenue to fishermen with less halibut bycatch. Options are for a 100/0 split or an 80/20 split of the TAC.

Proposal 22 – Dave Fraser and Sandra Moller (AEC, Adak Fisheries)
Proposal is to allow pollock trawling in AI region under the same SSL closure scheme as currently imposed on the cod fleet in the AI region. This would open up more areas to fishing yet preserve 10 n mi closures around SSL rookeries and 3 n mi closures around haulouts. Proposal includes several asserted "non-impacts" to SSLs based on data on overlap of fishing areas with SSL diving depths and foraging areas. An option is to apply changes in open/closed areas only in certain regions of the AI: Kanaga Sound, Atka Island, Rat Islands, Amutka Pass, and Shemya, with the priority areas being Kanaga and Atka. Outside the model mitigation is also suggested such as dividing the pollock TAC into three areas (541, 542, and 543), harvest caps, weekly catch limits, and other suggestions.

Proposal 24 – Dave Fraser and Sandra Moller (AEC, Adak Fisheries)
Proposal is to provide an alternative to the Atka mackerel platoon system after the Amendment 80 regulations are in place. This new system under Amendment 80 will create a limited access fleet that can fish for Atka mackerel and that will still be under platoon management. Instead of platoons, require registration for all vessels fishing in the open access fishery, set limits on number of trips per week, set a 100 mt limit per trip, and impose a lottery to choose participating vessels if more than three register. This fishery management would only apply to the inside-CH harvests in Area 542, but could include Area 541 if approved under Proposal 25 – (see below). This proposal includes some suggested options for outside the model considerations.

Proposal 25 – Dave Fraser and Sandra Moller (AEC, Adak Fisheries)
Proposal would allow non-amendment 80 C/Vs <100' to fish for Atka mackerel inside SSL CH in a 6 n mi x 6 n mi square area west of Kasatochi Island. This would open a currently closed area 10-20 n mi around the Kasatochi rookery. About 5% of the TAC would be involved and would affect 1 haulout and 1 rookery. This would allow access to fish by smaller C/Vs and more economic return to these vessels.

Proposal 23 – Dave Fraser and Sandra Moller (AEC, Adak Fisheries)
Proposal is to devise a way to split the cod TAC between the AI region and the Bering Sea and avoid SSL concerns. This could be done with a sector split or other mechanism, but more specifics are not provided in the proposal. Basically this is a concept the Council has worked on, and has postponed into the future. The objective would be to try to find a way to do an AI/BS split without triggering a formal consultation.

Board of Fisheries Proposals

Mel Morris reported on recent BOF decisions. Proposals 182 and 185 were discussed at the recent joint BOF/Council meeting, and these were referred to the State side of the Joint Protocol Committee for further review and a recommendation. That group will

meet soon to decide what to recommend. Ed Dersham noted that the BOF has received a new package of proposals, some of which may affect groundfish fisheries and SSLs. He suggested that the BOF might be able to sort through these and assemble a package for SSLMC review at its next meeting. There also may be implications to the SSLMC process from any action the Council may take on GOA cod sector slits. Also, the BOF could receive Agenda Change Requests in October, which could generate additional proposals for SSLMC review. Morris noted that his previous disclosures about BOF Proposal 6 no longer are relevant as he is no longer personally involved in this particular fishery (he had recused himself in previous BOF discussions of this proposal). In summary, the SSLMC agreed that BOF Proposals 6, 182 and 185 are still potentially relevant and should be scored with the PRT.

Proposal 182 – This proposal was previously presented and discussed by the SSLMC earlier in this meeting.

Proposal 185 – Sam Cotten (King Cove Advisory Committee)
Proposal is for the Federal parallel cod fishery in the W GOA. It would limit vessel participation to ≤58'. This would benefit local fishermen and local communities, but could disadvantage larger vessels. It was noted that large vessel participation could help with harvest in the B season given the recent difficulties in harvesting that season's TAC because of weather and cod disaggregation.

Proposal 6 – ADF&G/BOF
This proposal is to open a State waters pollock trawl fishery in the C GOA between 159 and 160 degrees near Seward, including areas around three haulouts; at those sites closures would continue to be 0-3 n mi. One haulout could be recategorized as a rookery given the pup production noted in recent years (Chiswell). The proposal has two options for harvest amounts: 1500 mt or an unlimited quota. Several additional measures would apply as well. It would benefit local fishermen and the seafood processing plant in Seward. It could reduce TAC available to C GOA fishermen and preempt some pollock fishing in other areas. Also, Chiswell is an active SSL research site and fishing near that site could affect this ongoing research; on the other hand, fishing here could also set up an experiment on the effect of pollock trawling on SSLs.

Future SSLMC Meetings

Chairman Cotter stated that the May and June meetings will be held in Seattle. The purpose for these meetings is summarized below.

May 7-10 (8:30 am – 5:00 pm daily) - Seattle, AFSC - This meeting will be structured into two time-certain parts: May 7-8 will focus on proposal work, and May 9-10 will focus on receiving new scientific information. The Subcommittee on Proposal Scoring will meet during the morning (8:30 am to noon) of May 7 to prepare for the full SSLMC. The overall goals for this meeting are to receive an updated report from the Subcommittee on Proposal Scoring and to work through and score all proposals (the full SSLMC will input proposals to the PRT and discuss resulting scores). In this process the SSLMC will receive any additional proposal information requested previously. On May 9-10, the SSLMC will receive and discuss new scientific information. The latter will

entail presentations from available scientists to update the SSLMC on new information collected in 2006-2007 (transient killer whale studies, FIT studies, SSL surveys, etc.).

June 19-21 (8:30 am – 5:00 pm daily) - Seattle, AFSC – This meeting will be focused on receiving a presentation on the revised draft of the SSL recovery plan. The Committee may also discuss the PRT in light of information contained in the revised recovery plan. The SSLMC will discuss what kind of report to make to the Council at its special August 1-3 meeting.

For the May 7-10 meetings, the Subcommittee on Proposal Scoring will bring its list of elements triggered by the proposals as a starting point for the full SSLMC. The subcommittee will also develop a preliminary list of outside the model considerations for each proposal, based on those elements that could affect SSLs that are not adequately evaluated by the PRT. The full SSLMC will develop additional outside the model considerations that may affect fishermen such as safety, economics, etc. The goal is to assemble a list of these considerations for each proposal to inform the process for evaluating all the proposals in the future.

PRT Weighting Factors

Chairman Cotter asked for a discussion on when to release to the public the final weighting factors contained in the PRT. The SSLMC felt that it would be better to wait until after the May meeting so that the Committee has the opportunity to become familiar with the scoring process and to input proposals itself. Also, the Committee was concerned that some proposers could "run their own proposals" or others' proposals, setting up potentially very lengthy discussions at the May meeting which could distract the SSLMC proposal scoring process. The Committee felt there will be ample opportunity for discussion of the scoring process in May.

Adjourn

The Committee adjourned at 9:50 am.

Bill Wilson
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North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
Regional Administrator's Conference Room
National Marine Fisheries Service
Juneau, Alaska
April 16, 2007 – Subcommittee Only
April 17-19, 2007 – Full Committee

Purpose: Proposal Scoring Subcommittee reviews and develops a process for inputting proposals to the PRT and defining *status quo* for each; SSLMC receives subcommittee report and reviews proposal input process; receive proposal presentations from proposers; discuss proposals with proposers and request additional information as needed.

AGENDA

April 16 – 8:30 AM – 5:00 PM

SSLMC Subcommittee on Proposal Scoring Meets to Review/Score Proposals (Hennen, DeMaster, Mabry, Hills)

April 17 - 8:30 AM – 5:00 PM

1. Introductions and Opening Remarks, Announcements, Agenda Approval (Cotter)
2. Minutes of Last Meeting (Wilson)
3. Update on SSL Recovery Plan and FMP Consultation Schedule (Wilson, Cotter)
4. State of Alaska's SSL Mortality Study Results (Turek, Krygier)
5. Review Comments on Proposal Ranking Tool from SSC's February Meeting
6. Review and Discuss Process for Proposal Input to PRT with Proposal Scoring Subcommittee (Hennen et al.)
7. Receive Presentations on Proposals from Submitters

April 18 – 8:30 AM – 5:00 PM

8. Proposal Presentations (Continued)
9. Committee Work Session on Proposals

April 19 – 8:30 AM – 5:00 PM

10. Committee Work Session on Proposals (Continued)
11. Identify Additional Information Needed from Proposers
12. Action Items, Closing Remarks, Adjourn (Cotter)

Public comment periods will be provided during the meeting.

Contact Bill Wilson at the Council offices if you have questions: 907-271-2809 or bill.wilson@noaa.gov

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North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
May 7-10, 2007
Alaska Fisheries Science Center, Seattle

Minutes

The Steller Sea Lion Mitigation Committee (SSLMC) convened in Seattle at the Alaska Fisheries Science Center on May 7-10, 2007. The SSLMC's Subcommittee on Proposal Scoring met on May 7 (8:30 am – noon) to refine and prepare recommendations on a procedure for scoring proposals. The full SSLMC started at 1:00 pm on May 7. Their report is provided as a part of these minutes. Committee members present were: Larry Cotter (Chairman), Jerry Bongen, Sam Cotten, Ed Dersham, John Gauvin, John Henderschedt, Dan Hennen, Terry Leitzell, Steve MacLean, Max Malavansky Jr, and Art Nelson. Also present were Earl Krygier (ADF&G), Bill Wilson (Council staff); Kristin Mabry and Melanie Brown (NMFS AK Region staff); John LePore (NOAA General Counsel AKR); several NMML scientists; and several members of the public.

The primary focus of this meeting was to score proposals and their corresponding status quo with the Proposal Ranking Tool (PRT) based on the proposal review conducted at the April 2007 meeting in Juneau and the recommended scoring triggers drafted by the Subcommittee on Proposal Scoring.

Chairman Cotter reviewed the agenda (attached), the work schedule for the coming several days, and Bill Wilson reviewed the handout materials provided to each committee member. The minutes of the SSLMC's April 17-19, 2007 meeting were reviewed and approved.

Subcommittee on Proposal Scoring

This subcommittee (Hennen, Mabry, Wilson, Brown) reviewed the materials prepared at the April 2007 meeting, and went through all the proposals to verify scoring recommendations developed previously and to refine those recommendations for presentation to the SSLMC later in the day. The subcommittee also drafted a list of "outside the model" considerations that could be the basis for a larger and more comprehensive list developed by the SSLMC. The subcommittee acknowledged the need for some discussion by the SSLMC of how to address outside the model issues, how to deal with proposals that either tend to cancel each other or conflict with each other, and how to assemble groups of proposals that might work together synergistically as a package for eventual recommendation to the Council. A spreadsheet was developed to be handed out to the SSLMC. No scores will be recommended; the subcommittee recommended only that the SSLMC identify the elements in the PRT that each proposal "triggers' and then the scoring process would occur afterwards. Each proposal will have a score and a companion status quo score, the difference between which will be the proposal's rank. Note that the Board of Fisheries (BOF) proposals correspond to this numbering system: BOF 6 = Proposal # 30, BOF 182 = 31, and BOF 185 = 32.

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SSLMC Review of Proposals

Dr. Hennen and Ms. Mabry presented the subcommittee's report to the SSLMC and walked the committee through the process at hand: identifying the elements of the PRT that each proposal "triggers". Each SSLMC member was provided with a handout containing the subcommittee's recommended starting point for triggers for each proposal. The SSLMC then walked through each proposal, identifying their recommendations for how to input each to the PRT. The following is a brief overview of the discussions and PRT triggers.

Proposal 3

Triggers: prey field: duration. The SSLMC discussed at length the meaning of duration in relationship to the length of a fishing season that could be affected by this – or any – proposal. Does a shift in the season start date to an earlier date lengthen the season when a fishery as a result might fish more efficiently and harvest the TAC quicker – thereby actually, and in reality, shortening the overall season? Higher value catch (e.g. roe-bearing fish) might attract greater effort resulting in quicker harvest of the TAC. The subcommittee recommended as a start that only the regulatory season be considered – i.e. if a proposal asks to start a fishery earlier, but doesn't ask to have it end earlier, then that season would lengthen. The subcommittee suggests that the SSLMC be consistent in how it judges fishery duration. Some suggested such considerations could be evaluated outside the model. Other outside the model considerations (OTMC) for this proposal would be safety, weather, and other fisheries. The SSLMC followed the subcommittee's suggestions for inputting this proposal to the PRT.

Proposal 4

Triggers: prey field: % of TAC shift; and SSL prey: season. The SSLMC again discussed the length of season issue. The subcommittee felt there was no duration issue triggered. An offsetting consideration could include a shortened season but this was an option and not part of the main proposal. The SSLMC also noted that this proposal may affect more than one season. Mr. Cotter suggested that the SSLMC could run these kinds of proposals two ways: with season duration changed and not changed to evaluate the effect. It was noted also that in the future, if cooperatives develop as a result of cod apportionment changes made by the Council, this may affect rate of harvest. The SSLMC further discussed the effect of moving TAC to the A season on harvest rate and season length. No firm agreement was made on how to evaluate proposal effects on fishing duration.

Proposal 1

Triggers: none of the three arms of the PRT are triggered by this proposal. The model is insensitive to what this proposal would accomplish, and thus is "neutral" on its effects on SSLs. The proposal will have OTMCs such as economic effects. There also is a question as to effects of changing the end of B and start of A season "window" on SSLs (November 1 through January 20); this proposal offers a shortened A season to accommodate an earlier start, it would cut into that "window" having potential effects on

SSLs that are not modeled by the PRT. The SSLMC also noted that for some proposals, there may be effects on a fishery that harvests prey items of potentially less (or greater) value to SSLs than another proposal, and this is not captured in the PRT. These kinds of issues can be considered outside the model; perhaps also when two closely-ranked proposals are compared, perhaps such a consideration could be a way to further differentiate between them.

Proposal 2

Triggers: prey field: season, amount of TAC shifted and SSL diet: season. This proposal offers a different TAC apportionment scheme when the annual TACs change (if below 1.3 million mt, then the apportionment would shift to apportioning more TAC in the A season). One possible outcome is a shortening of the season if the fleet has the capacity under lower TACs to harvest a greater proportion of the TAC early, thereby shortening the overall season. Or it may now, depending on fleet behavior, which is difficult to define *a priori*. This uncertainty might be clarified by obtaining data on A versus B season pollock CPUEs. Another consideration discussed was how a proposal might affect fishing near SSL CH areas such as the SCA.

Proposal 7

Triggers: prey field: season and duration. The subcommittee felt that this proposal has two parts, a summer part and a winter part, each of which should be scored and then added. The SSLMC discussed the proposal at length, and decided to set it aside for a review later. The proposal is complex and may be too difficult to input to the PRT.

Proposal 8

Triggers: spatial/temporal: proximity and % of SSL sites. It also may trigger SSL diet: subregion. There is an inter-region trade-off in this proposal, opening some areas and closing other areas (SSL CH areas). While the proposal may affect only portions of some SSL closed areas, the model requires taking a worst case and assumes the effect is on the entire closed area around the SSL sites affected. An OTMC would be the amount of the closed area affected.

Proposal 9

Triggers: prey field: season; and SSL prey: season. The TAC shift would be all within the winter season in practicality, but for the PRT scoring the SSLMC needs to consider the TAC transfer to be summer to winter. The TAC harvest by this sector is very small so the TAC shift is nearly undetectable by the PRT, and thus TAC shift is not triggered.

General Note: The SSLMC discussed the process for changing proposals as it works through the current proposals; it was agreed to not make changes now, but run them through the PRT first and then later in the analysis process accommodate changes. The SSLMC also requested that each proposer eventually develop information on the characteristics of the fishery their proposal would impact, and provide this information to the SSLMC: average weekly harvests, by season, by geographic area, etc. This

information will help the SSLMC with the analysis process. This information is requested for the next SSLMC meeting, which might be well into the future.

Proposal 10

Triggers: prey field: season and TAC shift; and SSL prey: season. This proposal is similar to Proposal 9. It would shift about 18% of the regional TAC; this amount needs to be verified. It would affect all gear groups.

Proposal 11

Triggers: prey field: season and % TAC shift; and SSL prey: season. This is another TAC shift proposal (from one season to another). The proposal seeks to put more TAC into the A&B seasons. The SSLMC discussed how TAC is apportioned in the GOA to regions and seasons. Regional apportionments are based on pollock biomass distribution which is estimated as part of the annual stock assessment process.

Proposal 12

Triggers: spatial/temporal: proximity. The proposers are unsure whether Jude Island ahs changed from a haulout to a rookery, and how that reassigning takes place.

Proposal 13

The UNFM clarified the amount of cod that would be requested for the Bogoslov exemption area: it would be based on 1% of the BSAI cod TAC which for 2008 would be approximately 560 mt. The proposers also request including pot gear as allowable fishing gear for the exemption area. The SSLMC concurred with this request. The proposal potentially would trigger prey field: % of TAC and duration, but the SSLMC felt this proposal would affect such a small amount of TAC that the PRT would not be sensitive to this small a TAC shift. Thus, the proposal was judged to be a net zero or *de minimus* and would be scored as a net neutral effect.

Proposal 14

Triggers: prey field: % TAC and duration. The subcommittee recommended breaking it into two subproposals, one for aggregating small TACs in the winter season, and another for aggregating small TACs in the summer season. Some suggested a need to consider how this proposal might affect the GOA pollock stock assessments and how biomass is distributed. It was also noted that with small seasonal quotas, this fishery can be difficult to control so that the harvest of the TAC is optimized while not over harvesting the TAC.

Proposal 15

Triggers: spatial/temporal: proximity. The main issue is to provide a safe area for small vessel harvesting.

Proposal 16

Triggers: SSL prey: duration. This proposal would shorten the C season by 7 days. This helps alleviate the fish processing conflicts in Kodiak. The SSLMC notes that the local fleet already voluntarily does this, but is requesting that it be in regulations.

Proposal 17

This proposal should be broken into several subproposals because of the multiple seasons affected. Triggers: both the SSL prey field and the SSL prey arms of the PRT. There would be one subproposal for the C GOA and one for the W GOA. The SSLMC felt that the PRT doesn't have the resolution to differentiate the two optional apportionment schemes requested in the proposal; both would likely result in the same score. For inputting this proposal to the PRT, the triggers are: prey field: season and % TAC shifted; and SSL prey: season. This proposal has several OTMCs.

Proposal 18

Triggers: spatial/temporal: proximity. This is another proximity proposal that opens a closed area, albeit only a small portion of a closed area. It would affect 1 of 9 SSL sites in the region.

Proposal 19

Triggers: Spatial/temporal: proximity. This is similar to proposal 18, but proposes enlarging a closed area. It was noted that this also includes a research component (an OTMC). Some suggest that in the analysis of this proposal, two options be considered: a 3 to 20 n mi closure and a 3 to 10 n mi closure to examine the economic effects of both.

Proposal 20

This has 2 subproposals for the PRT, one affecting a summer haulout and another affecting a winter haulout. Spitz Island is 1 of 39 haulouts in this region. Triggers: spatial/temporal: proximity.

Proposal 21

Triggers: spatial/temporal: proximity. This is similar to proposal 20. There would be few vessels affected; 1 of about 56 SSL sites would be affected in the region.

Proposal 22

This should be broken into 4 subproposals, 1 for the rookery affected and 3 for the haulouts affected with varying proximity issues involved. Triggers: spatial/temporal: proximity and % of sites; and SSL prey: subregion (2 involved: C AI and W AI). The SSLMC discussed whether this proposal also triggers the prey field arm by shifting TAC.

General Note: Some believe that nearly all proposals trigger the third arm of the PRT: diet composition. The SSLMC discussed whether we should score all proposals with this

element triggered to differentiate the effects of each on SSL diet components. In some regions, the target species affected by the proposal may have more or lesser importance to the SSL diet than the target species affected by a different proposal. Using this arm of the model would enable differentiation among all proposals in terms of relative impact on important SSL prey items. The Subcommittee on Proposal Scoring will do this.

Another discussion point was to consider scoring all proposals that request opening a previously-closed area to be consistent in comparing proposals. This would address the shifting of TAC issues. The SSLMC suggested retaining this as an OTMC for now.

Proposal 23

This proposal cannot be scored by the PRT.

Proposal 24

The Subcommittee was uncertain how to score this proposal in terms of season affected. The SSLMC consensus is that winter would be the season affected. Also, there may be a need to develop several subproposals. Triggers: prey field: duration. After considerable discussion, the SSLMC felt this proposal will be difficult to score in its current configuration. Also, it is somewhat similar to Proposal 7. The SSLMC asked proposers for 7 and 24 to merge their proposals into a single proposal affecting the AI Atka mackerel fishery. A new Proposal 7/24 will be presented later.

Proposal 25

Triggers: spatial/temporal: proximity. This proposal may affect both a rookery and a haulout, so to input it to the PRT the SSLMC will need subproposals, 2 for SSL site type and 2 for season.

Proposal 26

Triggers: prey field: % TAC shift; and SSL prey: season. This proposal shifts cod TAC from the C season into the A season in the BSAI, compressing the fishery into two seasons.

Proposal 27

This is similar to proposal 2, but without a TAC trigger and includes a caveat for extra TAC to be harvested outside SSL CH. Triggers: prey field: season and % TAC; and SSL prey: season. The SSLMC has some uncertainty as to whether this proposal will shorten this fishery.

Proposal 28

Triggers: prey field: duration. This proposal extends the B season 1 extra month. OTMC: salmon bycatch may change.

Proposal 29

Triggers: prey field: duration. This is similar to proposal 1. If the option to close the end of the season earlier also, this would then not change the duration element.

Proposal 30 (BOF # 6)

There would be two site types affected: 1 rookery and several haulouts. Triggers: spatial/temporal: proximity. The fishery would occur in the winter only. It is a fairly straightforward proposal to score. OTMC: important economic benefits to Seward, and Chiswell Island is an ongoing SSL research site.

Proposal 31 (BOF # 182)

This proposes to potentially shift TAC into W GOA State waters. The SSLMC referred to the NMFS letter commenting on how this proposal may affect SSLs. It is a difficult proposal to score, although some assumptions could be made to facilitate scoring it. The SSLMC consensus was to not score this proposal to be consistent with the Committee's set procedures for inputting proposals to the PRT.

Proposal 31 (BOF # 185)

This proposes a vessel size limit, and this cannot be scored with the PRT.

Proposal 32

This is a proposal generated by blending proposals 7 and 24. The proposal would change management of the Atka mackerel fishery in the Aleutians from the current platoon system to a system managed under intercooperative agreements to limit daily catch rates in regulatory areas and within SSL CH areas. The consensus among the SSLMC is that this proposal is not scorable with the PRT but would be evaluated outside the model.

New BOF Proposals

Art Nelson reported that BOF staff reviewed new proposals received by the BOF. Several affect groundfish fisheries, but none of those appear to have SSL issues. There could be Agenda Change Requests received by the BOF in the future that may have SSL issues associated with them; these would be brought to the Council and SSLMC if received.

Proposal Ranking Modeling Results

After the proposals were reviewed by the SSLMC, they were input to the PRT and scored. A score was developed for the proposal and for its *status quo*, with the difference between the two scores (proposal score minus *status quo* score) the rank each proposal receives.

Scientific Presentations

The SSLMC received updates on SSL and other related research conducted in 2006. The following are brief summaries of these presentations. These presentations will be placed on the next SSLMC Resource CD as well as the new scientific papers discussed during these presentations.

Steller sea lion research

Lowell Fritz presented an overview of recent SSL studies. These include vital rates studies based on brand/resightings, aerial nonpup surveys (partial in 2006 because of HSUS lawsuit and injunction), and abbreviated field demographic and behavioral observations.

Vital rates studies are conducted to estimate survivorship, by year, using pup brandings. About 5800 pup brandings have been made since 2000 (including eSSL, wSSL, and AsianSSL populations). These may continue, depending on the outcome of the HSUS lawsuit and EAS and future permitting decisions.

Nonpup aerial surveys suggest that abundance trends are up since 2000, and in 2006 (recognizing the central AI and central GOA were not well surveyed) trends were little changed from 2000-2004 in most areas but in the western AI trends were down slightly. Plans are to do a 2007 pup survey.

Survivorship and natality studies (in the central GOA) using the pup and nonpup counts suggest that juvenile and adult SSL survivorship has increased in the past several decades, but trends for pups is down (based on modeling by Holmes and York). Researchers believe some factor(s) is influencing the ratio of pups to nonpups through reductions in production of pups or increases in the proportion of nonpups. Model results have been checked against independent field data including brand survival, late term pregnancy rates on Marmot Island, and the 2004 age structure. A question: is carrying capacity (K) lower now versus the 1970s, and why? Another question: why does K appear to be unchanged for lower trophic level organisms (e.g. groundfish)? The most pressing research need appears to be data on late spring pregnant female SSLs, especially those SSLs that are both carrying a near-term fetus and nursing a juvenile, placing large energy demands on those females during the spring.

In 2007, NMML plans to do aerial nonpup surveys, brand resighting and natality estimates, cruises to do vessel-based brand resightings, and hopefully (if permits are granted) pup condition surveys, scat collections, and SSL captures for telemetry work.

Some discussion focused on possible factors affecting the SSL decline. One issue raised was the role of contaminants in adult SSLs and the potential for "dumping" contaminant loads on fetuses, possibly affecting natality.

Northern fur seal studies

Brian Fadely provided an overview of the 2006 NFS studies. These included pup and bull counts on the Pribilof Islands, scat collections for diet studies, NFS foraging

behavior using satellite telemetry, and winter migration (telemetry). Both spew and scat data re necessary to better characterize NFS diet and prey item sizes. NFS migration data show that NFS pups make extensive migrations across the entire North Pacific, while adult females are more directional to areas east of 180 degrees.

Telemetry work indicates that foraging females segregate to specific foraging areas depending on the rookery sites they are from. Bogoslov Island NFS telemetry work indicates these animals forage closer to the rookery. Bogoslov NFS foraging distances are <150 km while Pribilofs NFS forage ~300 km from land. Foraging duration is shorter at Bogoslov (2 days) versus the Pribilofs (7-9 days). And Bogoslov pups gain weight quicker than on the Pribilofs.

NFS studies for 2007 include continued bull and pup counts, telemetry and female foraging studies, winter migration studies of Pribilof pups and juveniles and adults, and new tagging studies to gather vital rates data.

Transient killer whale research

Paul Wade and other NMML cetacean researchers are at the International Whaling Commission meeting, and John Bengtson presented this overview. Recent work on transient killer whales include a series of recently-published papers that respond to the Springer et al. paper on cascading collapse of North Pacific megafauna. These papers point out some inconsistencies or discrepancies in the original paper. Transient killer whale tagging studies have continued, including both vessel-based surveys, satellite tagging, and observations of cookie cutter shark bites suggesting movements of some whales to warmer waters. Recent studies have also included stable isotope analyses of killer whale samples to study diet. Killer whale abundance studies also continue, with recent data suggesting that for the Kenai to Tanaga Pass area ~250 tKWs are present seasonally; other studies suggest up to 370 tKWs in this region. Further studies and calculations of the energetic demands of tKWs indicate that SSLs probably constitute around 4-8% of the overall annual tKW diet and that the tKW-caused mortality of SSLs (wSSL) may be in the range of 2700 to 4200 SSLs per year.

NPUMMRC Updates

Andrew Trites presented an overview of recent SSL studies conducted by various researchers associated with the North Pacific Universities Marine Mammal Research Consortium and the Vancouver Aquarium. Most of these studies focus on one or more of the hypotheses for the SSL decline.

A recent paper (Guenette et al) discusses correlations of trends among various ecosystem components to the SSL decline; results suggest that some potential competitive interactions could have had some effect (e.g. SSLs with arrowtooth flounder, predation of SSLs, or commercial fishery effects) but those with the larger potential effect were climate change. This work suggests that climate may have been a major factor but predation also can have an effect when SSL abundance is low.

Dr. Trites also reported on recent papers that discussed the role of predation, diet, and PDO effects on SSL trends. Another paper explored the relationship between the SSL and NFS trends, noting that the SSL decline appears to have lagged the NFS decline.

New research has included exploring some of the potential clues to SSL population health. These include diet and whether SSL diet has changed over time from higher nutritional value items before the decline to lower value items in recent years. Other clues include juvenile production, SSL body size (including some recent work on adult skull size), SSL birth rates, pup or juvenile suckling (by sex), parent-offspring conflict behavior, and reproductive failure (when and to what extent pregnant females abort fetuses).

New research shows that some haulouts are also used as breeding sites in the eastern SSL population. Observations show males guarding harems and copulation on these haulouts. Dr. Trites also reported on new studies of seasonal diet and SSL body size, seasonal changes in feeding and growth in captive SSL facilities, and new ecosystem modeling of SSL critical habitat. This latter study was a modeling effort using physical oceanographic data and observations of SSLs from platforms of opportunity to develop a probabilistic depiction of female SSL habitat. Overlain with commercial fishing data, such an approach might be used to reevaluate the concept of critical habitat. Probability plots of potential critical habitat show areas of likely high concentrations of female SSLs, with different "pictures" of critical habitat in winter versus summer seasons.

Aleutian Islands Ecosystem Modeling

Sarah Gaichas with the AFSC presented an overview of recent work on a Fishery Ecosystem Plan for the Council. The Council is preparing the FEP as a guidance document for future fishery management decisionmaking in the AI region. The focus has been on ecological modeling to identify relationships among ecosystem comnponents in a risk assessment framework. This approach would allow the Council to put into perspective potential consequences of alternative actions.

The FEP will be a compendium of information but will not have legal authority; that will remain with FMPs. Dr. Gaichas reviewed the various elements of the FEP. The FEP provides an historic timeline of biomass removals in the AI region, and descriptions of the physical and biological environment, biological relationships, food webs, and energy flow models. These models portray prey production and consumption among the main predaotrs in the AI ecosystem including commercial fisheries. Dr. Gaichas noted some fo the interesting and strong relationships between Atka mackerel and pollock because of mutual predation interactions.

Ecosystem modeling in the AI region includes illustrations of spatial complexity in food webs across the geographic range of the Aleutian Islands. The FEP also includes information on socioeconomic relationshops among AI communities and potential interactions between communities and the regional ecosystem.

The FEP provides a characterization of the overall AI ecosystem structure and function and the interactions among ecosystem components in context with the probablility,

extent, and duraqtion of interactions to develop a risk assessment (i.e. the probability of interactions occurring relative to the degree of impact on the ecosystem from these interactions). Examples of interactions include marine shipping, fisheries, military activities; each has potential risks associated with their interactions with the AI ecosystem.

The FEP is being revised and will be presented in near final form at the June Council meeting.

Spatial fisheries values in the North Pacific

Matt Berman with the University of Alaska Anchorage presented recent work on economic modeling to evaluate potential effects of SSL closures, or other MPAs, on commercial fisheries. The focus I son how spatial and temporal scales of closed areas affect fishery costs. Dr. Berman's approach is to link spatial variability of fisheries to opportunity costs affected by closed areas to examine profits forgone from time/area closures.

This approach uses available data on depth (bathymetry), and remotely-sensed data on chlorophyll, seasurface height, water temperature,a nd salinity, all of which are various indicators of potential ocean productivity and in turn areas that may be valuable to foraging by SSLs. Other inputs include output from Regional Ocean Modeling System (in the GOA). Data are compbined in a GIS to try to explain patterns of fish distribution (from survey data) and fishery catches (from observer data). Out put are spatial plots of predicted fishing areas overlain with closed areas to calculate fishing areas affected by closured. An economic model element based on fishing costs and fishery values predicts values of fishing areas (an important factor is distance of fishing areas to ports). The goal is to use such modeling to help evaluate potential costs to a fishery from various alternative area closures in different regions by season.

Fishery Interaction Team updates

Libby Logerwell presented an overview of recent FIT research. This included new pollock and Atka mackerel studies. The pollock study at Kodiak continued in 2006 to examine potential effects of fishing on pollock in Barnabas and Chiniak Troughs, with Chiniak the control and Barnabas the experimental. Acoustic surveys of pollock were conducted in each trough before and after commercial fishing occurred in Barnabas Trough. In 2006 there was some decrease in pollock biomass after fishing, but this occurred in both the fished and unfished troughs, and thus an effect of fishing could not be detected. It is uncertain if this experiment can be continued due to uncertain availability of a NOAA survey vessel.

The 2007 Aleut Corporation/AFSC AI pollock Exempted Fishing Permit study of pollock biomass in the AI region resulted in a larger survey than in 2006. Data are currently being analyzed; a report may be provided to the Council late in the year.

The Atka mackerel study focuses on the efficacy of trawl exclusion zones (TEZ) around SSL sites in the AI region. The approach is to tag mackerel inside and outside TEZs and

recapture tagged fish later in the year using chartered and commercial vessels. The studies in 2006 were at Seguam Pass and Kiska Island. Combined results from this year and previous years indicate that Atka mackerel tent to remain in geographic areas to some extent, but that some "leakage" outside areas does appear to occur. But, movement patterns indicate there is both movement from outside to inside, and from inside to outside, TEZs and this pattern differs by area in the AI. Biomass of Atka mackerel also varies by area (inside and outside) and by region within the overall AI area. It appears that the areas around Seguam Pass are important spawning areas and biomass levels there are generally higher than other areas. Atka mackerel seem to be feeding more in this area also.

Review of PRT output: proposal rankings

Kristin Mabry led the SSLMC through a series of spreadsheets that explained how the PRT scored proposals and their relative rankings. Handouts included the detailed list of elements triggered by each proposal and the rankings and a set of tables showing the model weightings for all elements (all bins in the model). The model output is a series of proposal scores that range from +0.0248 to -0.0087. Some proposals cannot be scored with the PRT because they don't trigger PRT elements; some proposals have low or neutral scores because they either have little impact or impact cannot be detected by the PRT. Six proposals could not be scored because of the above issues. Two proposals were combined with the resultant proposal (the resultant proposal also could not be scored – it is one of the six).

All proposals were also run through the "Effects on SSLs: diet composition" arm of the PRT to rank proposals in terms of potential effects on SSL nutrition (based on fishery target species and region and season). It is important to note that these "SSL nutrition effects" scores cannot be added to the PRT scores as they have different meanings; this is just another tool that can be used to evaluate proposals.

It is important to note that all model output and proposal scores are DRAFT at this time. The next steps in the proposal review process include asking all proposers to review the process used by the SSLMC to input them to the PRT to verify elements of the model triggered by the proposal. Mistakes or other issues will be discussed at the next meeting and a final ranking will be produced. Individuals can run the model on their own from the spreadsheets distributed at this meeting. Ms. Mabry will prepare for a session at the June meeting explaining how to run a proposal using the spreadsheets for those who are interested. At this point, the PRT and these proposals may be set aside until the consultation process can "catch up". When the SSLMC picks this up again, it will then move into consideration of OTMCs, further analyses, and development of a package for Council consideration.

The next meeting will be at the AFSC on June 19-21, 2007. Agenda items include:

- A review and update of PRT output and proposal rankings
- Overview of how to input proposals to the PRT using the model weightings spreadsheets
- New SSL research results from the Alaska Sea Life Center
- Review the revised draft SSL recovery plan

DRAFT numbers handed –out – final versions with corrections etc, in June!!

Adjourn

The Committee adjourned at 3:30 pm May 10.

Bill Wilson
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DRAFT

North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
Alaska Fisheries Science Center
Seattle, Washington
May 7-10, 2007

Purpose: Proposal Scoring Subcommittee prepares recommendations for inputting proposals to the PRT and defining *status quo* for each; SSLMC receives updated information from proposers and reviews subcommittee report; SSLMC inputs proposals to PRT and scores all proposals; SSLMC receives new scientific information.

NOTE: Time Certain: May 7-8 will focus on proposal work; May 9-10 will focus on new scientific information

AGENDA

May 7 – 8:30 AM – Noon

SSLMC Subcommittee on Proposal Scoring Meets to Review/Score Proposals (Hennen, DeMaster, Mabry, Hills, Wilson)

May 7 – 1:00-5:00 PM

1. Introductions and Opening Remarks, Announcements, Agenda Approval (Cotter)
2. Minutes of Last Meeting (Wilson)
3. Review New Proposal Information (Wilson, Mabry)
4. Receive Report from Subcommittee on Proposal Scoring (Hennen et al.)
5. Input Proposals to Proposal Ranking Tool (Mabry, Hennen, All)
6. Develop Status Quo Scores for Proposals and Develop Ranking List (Mabry, Hennen, All)

May 8 – 8:30 AM – 5:00 PM

7. Proposal Scoring and Ranking (Continued)
8. Update on SSL Recovery Plan Review (Wilson, Cotter)

DRAFT

May 9 – 8:30 AM – 5:00 PM

9. Introduction to Presentations on New Scientific Information (Wilson)

10. SSL and NFS Research Updates (Fritz)

11. Updates on NMML Cetacean Studies/Emphasis on Transient Killer Whales (Wade, Durban)

12. Updates on NPUMMRC and UBC/Vancouver Aquarium SSL Research and Ecological Modeling (Trites)

May 10 – 8:30 AM – 5:00 PM

13. Aleutian Islands Fishery Ecosystem Plan and SSL/Fishery Interactions Modeling (Gaichas)

14. Economic Effects of SSL/Fishing Regulations (Berman)

15. Fishery Interaction Team Updates – Atka mackerel and pollock (Logerwell)

16. Action Items, Closing Remarks, Adjourn (Cotter)

Public comment periods will be provided during the meeting.

Contact Bill Wilson at the Council offices if you have questions: 907-271-2809 or bill.wilson@noaa.gov

SSLMC Proposal Ranking Tool
Model Weights as of 5/10/07

Effect of Fishing on SSL

Nutritional Needs

	Summer	Target Species			
		cod	pollock	atka	other
Region	EGOA	0.0006	0.0006	0.0002	0.0090
	CGOA	0.0002	0.0036	0.0001	0.0060
	WGOA	0.0020	0.0027	0.0012	0.0039
	EAI	0.0019	0.0025	0.0011	0.0044
	CAI	0.0006	0.0006	0.0071	0.0017
	WAI	0.0006	0.0061	0.0126	0.0072
	Pribs	0.0070	0.0092	0.0056	0.0076

	Winter	Target Species			
		cod	pollock	atka	other
Region	EGOA	0.0004	0.0004	0.0001	0.0068
	CGOA	0.0020	0.0020	0.0001	0.0037
	WGOA	0.0017	0.0043	0.0001	0.0017
	EAI	0.0015	0.0020	0.0017	0.0026
	CAI	0.0017	0.0009	0.0032	0.0020
	WAI	0.0017	0.0009	0.0032	0.0020
	Pribs	0.0011	0.0029	0.0001	0.0017

SSLMC Proposal Ranking Tool
Model Weights as of 5/10/07

Effect of Fishing on Prey

% TAC	summer	Duration of Fishery		
		shorter	longer	same
	1-5%	0.0044	0.0013	0.0023
	6-10%	0.0081	0.0019	0.0049
	>10%	0.0129	0.0023	0.0079
	no change	0.000037	0.00000006	0.00000013

% TAC	winter	Duration of Fishery		
		shorter	longer	same
	1-5%	0.0041	0.0010	0.0020
	6-10%	0.0074	0.0015	0.0044
	>10%	0.0119	0.0019	0.0071
	no change	0.00003	0.00000006	0.00000012

% TAC	summer-winter	Duration of Fishery		
		shorter	longer	same
	1-5%	0.0041	0.0010	0.0021
	6-10%	0.0075	0.0016	0.0045
	>10%	0.0117	0.0018	0.0070
	no change	0.00004	0.00000006	0.0000001

% TAC	winter-summer	Duration of Fishery		
		shorter	longer	same
	1-5%	0.0037	0.0010	0.0019
	6-10%	0.0073	0.0017	0.0044
	>10%	0.0110	0.0002	0.0067
	no change	0.00003	0.00000005	0.0000001

Effect of Fishing on SSL

Spatial/Temporal

Proximity (nm)

summer rookery	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0039	0.0096	0.0163	0.0214	0.0264
*3-10	0.0030	0.0074	0.0127	0.0167	0.0206
*10-20	0.0017	0.0041	0.0070	0.0092	0.0114
20+	0.0013				
not CH	0.0005				

Proximity (nm)

summer haulout	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0025	0.0062	0.0105	0.0138	0.0171
*3-10	0.0022	0.0053	0.009	0.0119	0.0146
*10-20	0.0011	0.0027	0.0047	0.0062	0.0076
20+	0.0005				
not CH	0.0003				

Proximity (nm)

summer other	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0010	0.0024	0.0042	0.0055	0.0067
*3-10	0.0007	0.0018	0.0030	0.0040	0.0049
*10-20	0.0004	0.0011	0.0018	0.0024	0.0030
20+	0.0004				
not CH	0.0003				

Proximity (nm)

winter rookery	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0029	0.0070	0.0120	0.0157	0.0194
*3-10	0.0024	0.0058	0.0099	0.0131	0.0161
*10-20	0.0011	0.0027	0.0045	0.0060	0.0074
20+	0.0010				
not CH	0.0004				

Proximity (nm)

winter haulout	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0027	0.0067	0.0114	0.0150	0.0184
*3-10	0.0023	0.0057	0.0098	0.0129	0.0158
*10-20	0.0008	0.0020	0.0034	0.0044	0.0054
20+	0.0005				
not CH	0.0004				

Proximity (nm)

winter other	Percent of Sites Affected				
	*1-10	*11-25	*25-50	*50-75	*76-100
0-3	0.0011	0.0026	0.0045	0.0059	0.0073
*3-10	0.0007	0.0018	0.0031	0.0040	0.0050
*10-20	0.0003	0.0008	0.0013	0.0017	0.0021
20+	0.0005				
not CH	0.0003				

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
1 NO MODEL SCORE	Pollock A starts 10-15 days earlier			Nutition score .002	Outside model: Shortening window between close of B and start of A Positive economic impact Unknown impact on Chinook bycatch Shoreside logistical concerns Effect b/c it closes earlier – go to cod trawl? – general spill-over effects
2 .0041 Net=.00160	Reaportion TAC from B to A, magnitude of shift depending on total TAC (BSAI pollock trawl)	Sum-Wint/1-5%/Same		Wint/EAI-BS/Pollock Nutition score .002	Shift occurs when TAC drops below 1.3 MT, but what is effect to SSL? (low biomass) Not based on ABC, but on TAC If shift when biomass low, multiplicatively worse? than when biomass is high Outside model: Positive economic impact Look at A and B season CPUE data
SQ .0025		Sum/No Chng/same		Sum/EAI-BS/Pollock	
3 **.00000006** Net= -.00000007	CP Cod Start date shifts 17 days earlier	Sum/No Chng/longer		Nutition score -.0019	Outside model: Economic benefits? Safer fishing in august Beneficial effects by extending season? Allow king crabbers safer fishing season Shortening window between close of B and start of A Offsetting considerations: may not effectively be a longer season Small number of vessels, small TAC
SQ .00000013		Sum/No Chng/same			

(no page 20)

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
4 .0036 Net=.00170	Reaportion TAC from B to A (BSAI cod - LL CP) A = 1/1 - 2/18 B = 8/15 - 10/21	Sum-Wint/1-5%/same		Wint/EAI-BS/cod Nutition score .0015	Small percentage of whole TAC (8%) Offsetting considerations: Amount of fishing days will decline – pg 3 of proposal Fishing outside of CH for additional catch in A season Could report an annual 'shorter' duration score as well Could be a co-op
SQ=.00190		Sum/No Chng/same		Sum/EAI-BS/cod	
7 RETRACTED	Removing some limits on TAC allocation from inside and outside CH & restrictions on concurrent cod and AM fishing- limit per day included				Changes some limits inside CH and would consider use of coops
8 Total -0.0087	Reduce size of trawl exclusion zone in Seaguam Pass for AM trade off with expansion at Cp Wrangel and Buldir			Nutition score .0032 Worst case of opening up fishing in WAI for atka	beneficial from trade off at Buldir and and Attu Open up rookeries at seguam, but not foraging area
8 A .0011 Net=.0001	Reduce TEZ at Seguam expand TEZ at Attu/Wrangell and Buldir winter		wint rk/10-20/1-10%		Seguam is 1 of 12 rookeries in central Aleutians (SSL areas) Attu/Cape Wrangell and Buldir are 2 or 4 rookeries in western Aleutians (SSL areas)
SQ .001			wint rk/20+/1-10%		

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
8 B .001 Net=-.0035	expand TEZ at Attu/Wrangell and Buldir winter		wint rk/20+/26-50%		
SQ .0045			wint rk/10-20/26-50%		
8 C .0017 Net=.0004	Reduce TEZ at Seguam Summer		sum rk/10-20/1-10%		
SQ .0013			sum rk/20+/1-10%		
8 D .0013 Net=-.0057	expand TEZ at Attu/Wrangell and Buldir summer		sum rk/20+/26-50%		
SQ .0007			sum rk/10-20/26-50%		
9 .0015 Net=-.0004	Shifting 29% TAC from B to A (BSAI cod - pot CV >= 60 ft) A = 1/1 - 2/3 B=9/1-12/31	Sum-Wint/no change/same		Wint/EAI-BS/cod Nutition score -.0015	Offsetting considerations: most catch will likely shift from late winter to early winter. The status quo summer in column 3 is worst-case scenario assuming all catch taken in September – first month of B season. Total change in TAC is not detectable by the model, estimated at <1% of that sector's allocation.
SQ .0019		Sum/No chng/same		Sum/EAI-BS/cod	
10 .0087 Net=.0067	Allow all TAC to be harvested in A (WGOA - cod assumed fixed gear from given start date) A=1/1-6/10 B=9/1-12/31	Sum-Wint/>10%/same		Wint/WGOA/cod Nutition score .0017	Outside the model: Large amount of fish not caught in B season, but under this scenario, will likely be taken during the A season. Net increase in harvest.

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
SQ .0020		Sum/No chng/same		Sum/WGOA/cod	
11 .0113 Net=.0086	Increase pollock TAC in A,B by 1/3 (total) (WGOA) A=3/10 B=3/10-5/31 C=8/25-10/1 D=10/1-11/1	Sum- Wint/>10%/same		Wint/WGOA/pollock Nutition score .0043	
SQ .0027		Sum/No chng/same		Sum/WGOA/pollock	
12 .0041 Net=.0028	Open Jude Is. to 10 nm for pollock trawling 9 rooks in WGOA - Jude = 14% of sites		sum rk/10-20/11-25%	Nutition score .0027	Alternative to open only Pavlof Bay portion Jude is one of 7 rookeries in the western gulf
SQ .0013			sum rk/20+/11-25%		
13 No MODEL SCORE	Removing/increasing catch limits on fixed gear cod (<60ft) fishing in Bogoslof closure area (1 of 9 rooks in EAI)			Nutition score .0015	Outside the model: Increase in harvest of about 500MT in an already open area Small boats only, small % of overall TAC Adding pot boats
14 Total .025	Aggregate A and B and C and D pollock seasons when TAC is low (WGOA) A=1/20-3/10 B=3/10-5/31 C=8/25-10/1 D=10/1-11/1			Nutition score .0043	Outside the model: Triggered when TAC is low (biomass is low). SSL effects? Could help control the fishery and keep it under quota.

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
14 A .0119 Net=.0119	A + B Winter	Wint/>10%/shorter			
SQ .00000012		Wint/No chng/same			
14 B .0129 Net=.0129	C + D Summer	Sum/>10%/shorter			
SQ .00000012		Sum/No chng/same			
15 .0023 Net=.0015	Allow trawl pollock fishing to 3nm of Cape Ugat during A and B and to 10 km in C and D (WGOA)		Wint HO/3-10/1-10%	Nutition score .0043	Outiside the model: Safety concerns (1 of 26 haulouts in the central gulf)
SQ .0008			Wint HO/10-20/1-10%		
16 .000037 Net=.000037	Move pollock C season back to 9/1 (from 8/25)	SUM/no change/shorter		Nutition score .0036	Outside the model: To prevent conflict with salmon processing Gentleman's agreement to stand down anyway, practically status quo Offsetting considerations: 7 day change only
SQ .00000013		SUM/no change/same			
17 Total .0155	Re-apportionment of cod TAC in GOA. 17A 100% in A, 17B 80 % in A (both gear types) Afixed=1/1-6/10 Atrawl=1/20-6/10 Bfixed=9/1-12/31 Btrawl=9/1-11/1 SQ = 60/40			Nutition score .0017	Outside the model: Options in proposal include 80/20 or 100/0. the model cannot detect a difference since both are over 10%, triggering that element in the model. More cod will be harvested = economic benefit

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
17 A .0087 Net=.0067	wgoa	Sum- Wint/>10%/same		Wint/WGOA/cod	
SQ .002		Sum/no chng/same		Sum/WGOA/cod	
17 B .009 Net=.0088	cgoa	Sum- Wint/>10%/same		Wint/cGOA/cod	
SQ .0002		Sum/no chng/same		Sum/cGOA/cod	
18 .027 Net=.0017	Allow Cod trawl fishing to 10 nm from 1/20-6/1 and to 20 nm from 6/1 - 11/1 at Chernabura (WGOA)		Wint Rk/10-20/11-25%	Nutition score .0017	Outside the model: All currently participating vessels are less than 60 feet Opens a fraction of closed area around rookery 1 of 7 western gulf rookeries
SQ .001			Wint Rk/20+/11-25%		
19 total Net=-.0042	Extend closures around Dalnoi Pt (from 3) Pribs 20nm year-round			Nutition score -.002	Outside the model: Closure would cover other ssl sites Research component -- counts of animals in all seasons Reduce bycatch 1 of 9 Bering Sea Haulouts Offsetting considerations: Include 3-10 as well as 10-20 (Look at amount of harvest) and seasonal aspects

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
19A .0005 Net=-.0022	Expand to 20 winter		Wint HO/20+/1-10%		
SQ .0027			Wint HO/0-3/1-10%-50%		
19B .0005 Net=-.002	Expand to 20 summer		Sum ho/20+/1-10%		
SQ .0025			Wint HO/0-3/1-10%		
20 Total .0007	Open Spitz Is. HO to beach for jig and pot gear WGOA Now closed to 3nm			Nutition score .0037	1 of 13 western gulf haulouts Outside the model: Variable seasonal use by ssl, possibly very little use Would ultimately be a BOF action for state waters fishery.
20 A .0025 Net=.0003	Summer		Sum HO/0-3/1-10%		
SQ .0022			Sum HO/3-10/1-10%		
20B .0027 Net=.0004	Winter		Wint HO/0-3/1-10%		
SQ .0023			Wint HO/3-10/1-10%		

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
21 Total .0035	Open Sutwik to 3nm for cod pot and jig gear CGOA Now closed to 20nm			Nutition score .0022	Outside the model: 4 vessels Amenable to small boat limits 1 of 26 central gulf haulouts
21 A .0022 Net=.0017	summer		Sum HO/3-10/1-10%		
SQ .0005			Sum HO/20+/1-10%		
21 B .0023 Net=.0018			Wint HO/3-10/1-10%		
SQ .0005			Wint HO/20+/1-10%		
22 Total .0242	Open all CH in AI to pollock trawling to 10 nm from rk and 3nm from HO			Nutition score .02	Outside the model: New effort in AI CH Economic boost for Adak Research component All rookeries and haulouts affected – (other options available) Estimate catch that may occur here
22A .0083 Net=.0079	Rookeries		Wint Rk/10-20/76-100%		
SQ .0004			Wint Rk/not CH/1-10%		

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
22B .0167 Net=.0163	HO's		Wint HO/3-10/76-100%		
SQ .0004			Wint HO/not CH/1-10%		
23 NO MODEL SCORE	TAC allocation split for cod between AI and BS				Can't be addressed by the model
24 RETRACTED	Temporal dispersion of AM fishing in CAI				Outside the model: Trip limits, weekly limits
25 Total .0057				Nutition score .0103	
25 A .0023 Net = .0019	Allow AM fishing to 10 nm from Kasatochi. CAI rook winter		Wint HO/3-10/1-10%		(1 of 12 rks)
SQ .0004			Wint HO/not CH/1-10%		
25B .0022 Net=.0019	summer HO		Sum HO/3-10/1-10%		1 of 36 haulouts
SQ .0003			SumHO/not CH/1-10		

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
25 C .0011 Net=.0007	CAI - winter		Wint rk/10-20/1-10%		
SQ .0004			Wint rk/not CH/1-10%		
25 D .0017 Net=.0012	summer		Sum rk/10-20/1-10%		
SQ .0005			Sum rk/not CH/1-10%		
26 .0036 Net=.0017	Transfer the BSAI cod trawl CV C apportionment (3.3%) to A. A=1/20-3/8 C=7/19-8/31	Sum-Wint/1-5%/same		Wint/EAI-BS/cod Nutition score .0015	Outside the model: Compacting 3 seasons into 2
SQ .0019		Sum/no chng/same		Sum/EAI-BS/cod	
27 .0041 Net=.0016	Shift pollock BSAI trawl A from 40% to 45% of TAC A=1/20-4/1 B=6/10-11/1	Sum-Wint/1-5%/same		Wint/EAI-BS/Pollock Nutition score .002	Likely result in shorter fishery? Groundtruth. Increased efficiency Extra 5% outside of CH Like #2
SQ .0025		Sum/no chng/same		Sum/EAI-BS/Pollock	
28 .00000006 Net =- .00000006	Extend BS pollock B season till 12/1 A=1/20-4/1 B=6/10-11/1	Sum/no change/longer		Nutition score -.0025	Outside the model: Salmon bycatch issues Shortening window between close of B and start of A

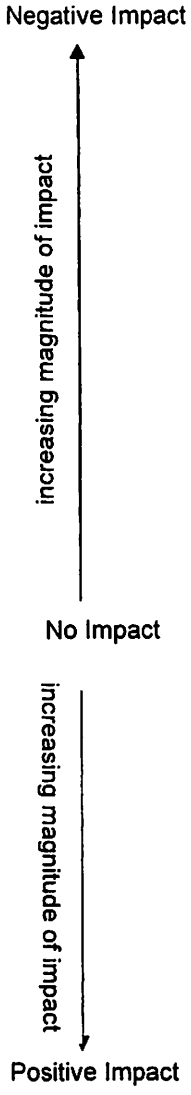
SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
SQ .00000012		Sum/no chng/same			
29 .00000006 Net =- .00000006	Make start date for BSAI pollock 5 days earlier A=1/20-4/1	Wint/no chng/longer		Nutition score -.002	Offsetting considerations: Close the A season five days earlier shorten separation between end of B and beginning A season
SQ .00000012		Wint/no chng/same			
30 (6) total .0132	Open closed areas >3 nm from SSL sites in EGOA near Seward Haul outs Rugged Is. HO, Seal Rx Kenai, Chiswell Rk.			Nutition score .0004	Chiswell as a rookery under draft biop eastern gulf (1 of 3 rks); Seal Rocks (Kenai) and Rugged Island are 2 of 12 haulouts in eastern gulf Outside the model: Economic benefit for seward Important research rookery
30 (6) A .0099 Net=.0054			Wint Rk/3-10/26-50%		
SQ .0045			Wint Rk/10-20/26-50%		
30 (6) B .0098 Net=.0078	haulouts		Wint HO/3-10/11-25%		
SQ .0020			Wint HO/10-20/11-25%		

SSLMC Proposal Ranking Tool Model Output
May 10, 2007

Proposal #	Description	Effects on Prey Field	Effects on SSL Proximity	Effects on SSL Nutrition	Outside the model
31 (182) NO MODEL SCORE	Shift TAC in area M into state waters, subsection of WGOA			Nutition score .0017	Model NMFS' analysis of proposal Not sure if including SSL protection measures. Outside the model: Handled by BOF
32 (185) NO MODEL SCORE	Restrict large vessels from cod fishing in st. water WGOA area 610. winter			Nutition score .0017	Outside the model: could lengthen season by allocating catch to vessels with lower catch rates Local economic benefit
33 New Joint Proposal combining former 7 and 24 NO MODEL SCORE				Nutition score .0032	Outside the Model; Control daily removals rates to help avoid localized depletion Allow slightly higher percentage taken inside CH where AM already occurs

Proposal Ranking Tool
DRAFT Model Output
May 10, 2007



Proposal #	Offsetting Considerations
14	
22 total	
17	
30 (6) total	
11	
10	
25 total	
21 total	
12	
18	
26	
4	If shorter duration, score is between 21 and 25.
27	
2	
15	
20 total	
16	if not shorter season, score is closer to 0.
28	
29	if duration is not longer, score is closer to 0.
3	if not a longer season, still scores near 0.
9	
19	at 10nm, the score is closer to 0 between 3 and 9.
8	

BOLD numbers indicate negative scores (positive impacts to SSL)
as measured by the PRT and the SSLMC expert judgment

No Outside Model Considerations Here!!!

SSLMC Proposal Ranking Tool
Draft Model Output
May 10, 2007

Negative Impact

increasing magnitude of impact

#	Effects on SSL Nutrition
22	WINTER/AI/POLLOCK
25	WINTER/CAI/ATKA
33	winter/AI/atka
14	winter/summer/wgoa/cod
11	WINTER/WGOA/POLLOCK
15	WINTER/WGOA/POLLOCK
20	SUMMER/WGOA/COD
16	SUMMER/CGOA/POLLOCK
8	winter/wai/atka
12	SUMMER/WGOA/POLLOCK
21	SUMMER/CGOA/COD
1	WINTER/EBS-AI/POLLOCK
2	WINTER/EBS-AI/POLLOCK
27	WINTER/EAI-BS/POLLOCK
10	WINTER/WGOA/COD
17	WINTER/CGOA/COD
18	WINTER/WGOA/COD
31	winter/wgoa/cod
32	winter/wgoa/cod
4	WINTER/EBS-AI/COD
13	winter/eai-bs/cod
26	WINTER/EAI-BS/COD
30 (6)	WINTER/EGOA/POLLOCK
9	**WINTER/EAI-BS/COD**
3	**SUMMER/EBS-AI/COD**
19	**WINTER/EAI-BS/POLLOCK**
29	**WINTER/EAI-BS/POLLOCK**
28	**SUMMER/EAI-BS/POLLOCK**

No Impact

increasing magnitude of impact

Positive Impact

BOLD numbers indicate negative scores (positive impacts to SSL) as measured by the PRT and the SSLMC expert judgment

Steller Sea Lion and Northern Fur Seal Research Final Programmatic Environmental Impact Statement

May 2007

Lead Agency:	United States Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service Office of Protected Resources Silver Spring, Maryland
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EXECUTIVE SUMMARY

ES-1.0 Introduction

This executive summary provides an overview of the findings contained in the Steller Sea Lion (SSL), *Eumetopias jubatus*, and Northern Fur Seal (NFS), *Callorhinus ursinus*, Research Programmatic Environmental Impact Statement (PEIS). This PEIS evaluates the effects of the type and range of SSL and NFS research activities (*i.e.*, the alternative actions) that may be exercised in current and future grants. This PEIS assesses the direct and indirect effects of various levels of funding and different research techniques on SSLs and NFSs throughout the entire range of these species in United States (U.S.) waters and on the high seas, which includes parts of Alaska, Washington, Oregon, and California. The effects of research on these species as well as other components of the marine ecosystem and human environment are presented. The PEIS assesses the contribution of research activities to the cumulative effects on these species and resources, including effects from past, present, and reasonably foreseeable future events and activities that are external to the research activities. National Marine Fisheries Service (NMFS) also acknowledges that other views of science exist than are contained in this review, including Alaska Native traditional knowledge. NMFS is committed to working with Alaska Native communities and strives to incorporate Native traditional knowledge into environmental documents.

The National Oceanic and Atmospheric Administration's (NOAA) NMFS is responsible for management, conservation, and protection of SSLs under the Endangered Species Act (ESA) (ESA; 16 United States Code [U.S.C.] 1531 *et seq.*) and the Marine Mammal Protection Act (MMPA) (MMPA; 16 U.S.C. 1361 *et seq.*) and NFSs under the MMPA. NFSs in the Pribilof Islands (St. Paul and St. George Islands) are also managed under the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*).

In 1990, NMFS listed SSLs as "threatened" under the ESA, and in 1997 the agency recognized two distinct population segments (DPSs): the western DPS and eastern DPS. The segment of the population west of 144° W longitude was listed as "endangered", while the segment of the population east of this delineation remained listed as "threatened". Both DPSs of SSLs are listed as depleted stocks under the MMPA. NFSs, recognized as two distinct stocks (Eastern Pacific and San Miguel Island [California]), have never been listed under the ESA, but the Eastern Pacific stock was listed as "depleted" in 1988 (then as the Pribilof Island population) under the MMPA (Figure 1.4-1).

ES-2.0 Proposed Action

NMFS administers a research program that includes (1) directed grants from the Alaska Region's operational budget, (2) "pass-through" grants detailed in the federal budget, and (3) permits issued pursuant to the MMPA and ESA for the purpose of facilitating research on SSLs and NFSs in lands and waters under U.S. jurisdiction. Most research activities on these species require permits, which NMFS administers to qualified individuals and institutions through the Office of Protected Resources, Permits Division (F/PR1). Permits are granted provided the proposed research activities are consistent with the requirements of the ESA, MMPA and the criteria in NMFS implementing regulations (50 Code of Federal Regulation [CFR] parts 216 and 222). The proposed action is to disburse federal funds and issue permits for research on SSLs and NFSs, consistent with applicable federal laws.

ES-3.0 Purpose and Need

The purpose of the research on SSLs and NFSs, as stated in the Steller Sea Lion Recovery Plan (NMFS 1992) and Northern Fur Seal Conservation Plan (NMFS 1993), is to promote the recovery of the species' populations to levels appropriate to justify removal from ESA listings (SSL) and to delineate reasonable actions to protect the depleted species under MMPA. NMFS awards grants to support research on SSLs and NFSs, and issues permits to allow an exemption to the prohibition on "takes" of SSLs and NFSs, established under the ESA and MMPA. The ESA and the MMPA prohibit "takes" of threatened and endangered species, and of marine mammals, respectively. Many research activities, including aerial and vessel-based surveys, tagging and marking

procedures, attachment of scientific instruments, and collection of tissue samples, require approaching or capturing animals and may result in harassment or other acts otherwise prohibited under the ESA and MMPA.

The purpose of the analysis contained in this PEIS is to assess the effects of research activities on SSL and NFS populations and components of the marine ecosystem and human environment.

The project is needed to:

- Address NMFS' responsibility to implement the ESA and MMPA for species under its jurisdiction, including SSLs and NFSs, to: (1) promote recovery; (2) identify factors limiting the population; (3) identify reasonable actions to minimize impacts of human-induced activities; and (4) implement conservation and management measures.
- Satisfy NMFS' obligations under National Environmental Policy Act (NEPA) by analyzing the environmental consequences of research it funds and authorizes on SSLs and NFSs, sharing and soliciting public comments on this information, and providing the basis for NMFS research grant and permit decisions.

At present, 23 active grants fund research projects that involve human interaction with SSLs. All active and anticipated SSL research funded by past, present, and expected future federal grants are covered by this PEIS document. Research activities taking place under active grants range from actions such as aerial surveys, which could disturb individual SSLs, to the capture of sample populations, for collection of blood and tissue samples. A description of permits valid between January 1, 2006 and December 31, 2011 may be found in Appendix A of this PEIS. Together, these permits currently authorize takes of SSLs throughout their range in the U.S. by a variety of research activities. In addition to authorizing various studies, the permits allow for the mortality of up to 60 SSLs per year incidental to research activities, not to exceed 18 SSLs from the western population. Applications for additional permits for studies of SSLs using these and other methods are anticipated for at least as long as this species is listed under the ESA. Further, NMFS has an ongoing obligation under Section 117 of the MMPA to prepare stock assessments for each marine mammal stock in waters under the jurisdiction of the U.S. These stock assessments, which must describe the geographic range, minimum population estimate, current and net productivity rates, annual human-caused mortality and serious injury, and other factors that may be causing a decline or impeding recovery, are largely dependent upon information obtained from activities conducted under research permits. Thus, NMFS anticipates a need to continue to issue permits for research on SSLs for as long as this requirement of the MMPA is in place.

Consistent with the purpose of the MMPA (16 U.S.C. 1361 *et seq.*), the purpose of conducting research on NFSs is to contribute to the basic knowledge of marine mammal biology and ecology and to identify, evaluate, or resolve conservation problems for the species. Research needs for conservation of this species are identified in the Northern Fur Seal Conservation Plan. Currently, the Alaska Region has not made any specific grant awards for NFS research. However, one pass-through SSL grant does support a small NFS study. Six permits or authorizations are currently active for research directed at NFS in the wild and are valid through October 1, 2010. Active permits for research on NFSs in the wild, valid through October 1, 2010, may be found in Appendix A of this PEIS. The active permits authorize takes of NFSs in California, and in Alaska on the Pribilof Islands and Bogoslof Island. As with SSLs, these permits authorize a variety of research activities ranging from vessel or aerial surveys that may disturb animals, to capture and sampling of animals, which may result in injury or incidental mortality. Applications for additional permits for studies of NFSs using these and other methods are anticipated for as long as there is concern about the population status and potential impacts of human activities, and general interest in studies of the species biology and ecology. Further, as with SSLs, NMFS has an ongoing obligation under Section 117 of the MMPA to prepare stock assessments for each marine mammal stock in waters under the jurisdiction of the U.S. and therefore anticipates a need to continue to issue permits for research on NFSs for as long as this requirement of the MMPA holds.

ES-4.0 Issues Raised During Scoping and Where They Are Addressed

The first step in preparing an EIS is publishing a Notice of Intent (NOI) in the Federal Register (FR). On December 28, 2005, the NOI (70 FR 76780) announcing the preparation of this PEIS was published requesting public participation in the scoping process. In addition to providing background information on the purpose of issuing scientific research permits and providing the statutory requirements for permits that allow research on marine mammals, the NOI also provided a list of issues on which NMFS was seeking public input. These issues included: 1) types of research; 2) level of research; 3) coordination of research; 4) effects of research; 5) qualifications of researchers; and 6) criteria for allowing modifications or amendments to existing grants and permits; and for suspending or revoking permits. To provide a framework for public discussion, the NOI also presented preliminary concepts for alternatives that could be considered for the PEIS; however, the exact structure and number of alternatives were developed after the scoping process was complete.

Three scoping meetings were held early in the project to disseminate information to the public and obtain public input. The public comment period for scoping comments ran for 60 days (between December 28, 2005 and February 25, 2006, inclusive). The locations and dates for the scoping meetings were: Silver Spring, Maryland (January 18, 2006); Seattle, Washington (January 20, 2006); and Anchorage, Alaska (January 23, 2006). A brief summary of the substantive issues raised during public scoping is presented in more detail in Section 2.2. A more complete summary of formal comments is included in the Scoping Summary Report, attached as Appendix D. The following table provides general categories of the types of issue raised in the NOI and during the scoping process and where these issues are addressed in the PEIS.

Table ES-1
Issues Raised in the NOI and Scoping Comments and Where They Are Discussed in the PEIS

Issue	Sections in the PEIS where Issue is Discussed
Issues Identified in the NOI	
Types of Research	2.4.2 Components Common to All Alternatives; 2.6 Alternatives Carried Forward for Analysis; 3.2.1 Steller Sea Lions: 3.2.2 Northern Fur Seals: Chapter 4 Environmental Consequences; Appendix A Description of Active Permits; Appendix B Description of Research Methodologies
Level of Research	2.6 Alternatives Carried Forward for Analysis; 3.2.1.11 Past Research, Levels of Effort, Funding and Program Histories Chapter 4 Environmental Consequences; Appendix A Description of Active Permits
Coordination of Research	3.2.1 Coordination of Research: 3.7 Grant and Permitting Process; 4.7.2 Coordination; 5.3 Recommendations for Coordination of SSL and NFS Research
Effects of Research	2.3 Research Components of the Alternatives: 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]; Appendix B Description of Research Methodologies
Qualifications of Researchers	4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species
Criteria for Allowing Modifications or Amendments to Existing Grants and Permits	4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species
Issued Raised in Scoping Comments	
Alaska Native Issues	3.2.1 Steller Sea Lions; 3.2.2 Northern Fur Seals; 3.4.1 Subsistence Harvest; 3.5 Coastal Communities; 4.7.2.3 Coordination Required Under Co-Management Agreements; 4.9 Social and Economic Environment; 5.4 Recommendations for Coordination with Alaska Native Organizations; Appendix F Co-Management Agreements for St. George and St. Paul Islands
Alternatives	2.6 Alternatives; 4.7 Elements Common to All Alternatives; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
Branding/ Hot Branding	2.3 Research Components of the Alternatives: 3.2.1 Steller Sea Lions; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]; Appendix B Description of Research Methodologies
Conservation of the Species/ Conservation Goals	1.2 Purpose and Need for Action; 3.2.1 SSLs; 3.2.2 NFSs; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
Coordination	3.2.1 Coordination of Research: 3.7 Grant and Permitting Process; 4.7.2 Coordination; 5.3 Recommendations for Coordination of SSL and NFS Research
Credentials of Researchers	4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species

Table ES-1 (continued)
Issues Raised in the NOI and Scoping Comments and Where They Are Discussed in the PEIS

Issue	Sections in the PEIS where Issue is Discussed
Cumulative Effects	4.5 Steps for Identifying Cumulative Effects; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
Duplication of Research Effort	3.2.1 Coordination of Research: 3.7 Grant and Permitting Process; 4.7.2 Coordination; 5.3 Recommendations for Coordination of SSL and NFS Research
Editorial Comments	Editorial Comments Made During Scoping Related to the 2002 and 2005 EAs on the Effects of NMFS Permitted Scientific Research Activities on Threatened and Endangered SSLs and are not applicable to this PEIS.
Effects of Research	4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]; Appendix B Description of Research Methodologies
Endangered Species Act	1.2 Purpose and Need for Action; 1.7 Federal Laws Applicable to SSL and NFS Research; 2.1.2 Relation of Alternatives to the Recovery and Conservation Plans; 1.9 Federal Permits, Licenses and Entitlements Necessary to Implement the Proposed Action; 3.2.1 Steller Sea Lions; 3.2.4 Other ESA-Listed Species; 4.8.4 Other ESA-Listed Species
Inadequate Information	4.3 Incomplete and Unavailable Information; Section 5.3.3 Monitoring Effects of Research
Methodology	Appendix B Description of Research Methodologies
Mitigation	4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Appendix B Description of Research Methodologies; Appendix E Requirements for Obtaining a Grant or Permit for Research on Protected Species
Marine Mammal Protection Act	1.2 Purpose and Need for Action; 1.7 Federal Laws Applicable to SSL and NFS Research; 2.1.2 Relation of Alternatives to the Recovery and Conservation Plans; 1.9 Federal Permits, Licenses and Entitlements Necessary to Implement the Proposed Action; 3.2.5 Other Marine Mammals; 4.8.5 Other Marine Mammals
Monitoring	4.7.5 Monitoring; 4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Section 5.3.3 Monitoring Effects of Research; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species
Mortality	2.5 Establishing Serious Injury and Mortality Limits Under the Alternatives; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
National Environmental Policy Act	1.2 Purpose and Need for Action; 1.5 Related NEPA Documents that Influence the Scope of this PEIS; 1.7 Federal Laws Applicable to SSL and NFS Research;
Potential Biological Removal	2.5 Establishing Serious Injury and Mortality Limits Under the Alternatives; 4.4.1 Impact Criteria for SSLs and NFSs; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
Permits, Grants and Applications	3.7 Grant and Permitting Process; 4.7.2 Coordination; 5.3 Recommendations for Coordination of SSL and NFS Research; 4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Appendix A Description of Active Permits; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species
Reporting Requirements	4.7.4 Mitigation and Conditions of Grants, Permits, and Authorizations; Section 5.3.2 Reporting Requirements; Appendix D Requirements for Obtaining a Grant or Permit for Research on Protected Species
Sample Sizes and Techniques	4.8.1 and 4.8.2 Environmental Consequences of the Alternatives on SSL and NFS: Appendix A Description of Active Permits; Appendix B Description of Research Methodologies
Take	2.5 Establishing Serious Injury and Mortality Limits Under the Alternatives; 4.4.1 Impact Criteria for SSLs and NFSs; 4.8 – 4.11 [Environmental Consequences of the Alternatives on Selected Resources]
Animal Welfare	1.2 Purpose and Need for Action; 1.7 Federal Laws Applicable to SSL and NFS Research 4.8.1 and 4.8.2 Environmental Consequences of the Alternatives on SSL and NFS

In addition to scoping, NMFS also conducted a series of focus group meetings in July and August 2006 with various agencies, researchers, Native Alaskan groups, and other interested parties to discuss the issues raised in scoping and previous NEPA-compliance activities, and to further inform the process of developing a reasonable range of alternatives.

ES-5.0 Public Comment Analysis and Response

The public comment period on the 2007 Draft PEIS began on February 16, 2007 and ended on April 2, 2007 for a total comment period of 45 days. During the public comment period three public hearings were held Silver Spring, Maryland; Seattle, Washington; and Anchorage, Alaska. Approximately 14 submissions were received by NMFS on the Draft PEIS by the deadline.

The Comment Analysis Report (CAR) appended to this document (Appendix C) summarizes the public comments. As the primary response-to-comment document for this PEIS, the CAR describes the methodology used by NMFS in reviewing and sorting the comments and presents a synthesis of all comments that address a common theme. It also documents changes made in the revised PEIS as a result of those comments. NMFS undertook a careful and deliberate approach to ensure that all substantive public comments were treated equally and reviewed, considered, and responded to on the basis of the quality and substantive content of the comment, and not on the basis of who wrote the comment or how many other comments agree with it. Commenters can reference how and where their comments were responded to by using the cross-reference tables in the CAR.

ES-6.0 Alternatives

Four alternatives were developed and are analyzed in this PEIS; they are described in more detail in Chapter 2. The alternatives represent a reasonable range of research granting and permitting options that fulfill the purpose and need for the federal action, (Chapter 1). The general policy direction of each alternative is described, followed by Table ES-2, which summarizes examples of specific research activities permitted under each alternative.

One way that the alternatives vary is that they have different thresholds for what would be considered an "acceptable" level of mortality associated with research activities. This threshold is based on a metric for fishery-related mortality that is defined in the MMPA; the Potential Biological Removal (PBR). The formula for PBR is a precautionary or conservative measure of human-caused mortality that could be expected to affect a population's ability to recover from a depleted state or to remain at a sustainable level. The PBR calculation contains provisions to account for uncertainty in population estimates and protects a larger fraction of annual productivity for depleted stocks through a recovery factor (Fr). For endangered populations, Fr is set at 0.1, so that 90 percent of the endangered population's annual net production is reserved for recovery of the population. NMFS has calculated that keeping human-caused mortality at or below PBR calculated with a recovery factor of 0.1 would increase the recovery time of endangered marine mammals by no more than 10 percent (Wade 1998). For threatened and depleted populations, Fr is generally set at 0.5 so that 50 percent of the population's annual net production is reserved for recovery. The MMPA requires NMFS to calculate PBR for each population of marine mammal in its annual stock assessment reports. PBR for the endangered western DPS of SSLs is 234 animals; PBR for the threatened eastern DPS of SSLs is 2,000 animals; PBR for the depleted eastern Pacific stock of NFSs is 15,262 animals; and PBR for the San Miguel Island stock of NFSs is 219 animals (Angliss and Outlaw 2007; Carretta *et al.* 2007).

There are a number of activities that do not require the types of research permits that are the subject of this PEIS, either because they would not result in takes of SSLs, NFSs, or other protected species; or because they are otherwise exempt from the prohibitions of the MMPA and ESA. These activities would be unaffected by any of the alternatives and are described in more detail in Section 2.4.1. There would be no impact on grant programs related to these types of activities under any of the alternatives. Common to all permits under any alternative are the statutory and regulatory criteria established under Section 10(a)(1)(A) of the ESA (16 U.S.C. 1539), Section 104 of the MMPA (16 U.S.C. 1374), and NMFS implementing regulations (50 CFR §216.31-216.41 and §222.301-222.309). Scientific research permits issued by NMFS pursuant to these statutes and regulations contain a number of conditions that are intended to ensure compliance of the research with the purposes of the MMPA and ESA. Other conditions commonly included in these permits are intended as measures to mitigate potential adverse impacts of the research. Mitigation for specific research procedures is discussed in Appendix B. Under any of the alternatives, researchers could obtain permits and be awarded grants for receipt and use of tissue samples from Alaska Natives who agree to provide samples from animals that have been taken legally for subsistence harvest or from animals that have been found dead (stranded) due to other causes.

A number of issues were raised by various stakeholders with regard to process and procedures associated with coordinating, conducting, and reporting on research activities. Though not specifically identified as elements of

the alternatives, these issues and a discussion on how this PEIS will help guide future NEPA compliance, are discussed in Chapter 5.

Alternative 1 – No Action: No New Permits or Authorizations

Under Alternative 1, no incidental or intentional mortality due to research activities would be authorized. The No Action Alternative would only allow research activities on SSLs and NFSs that either do not require a permit (i.e., do not result in takes of SSLs and NFSs) or are currently allowed under permits that have not been vacated by the May 26, 2006 court order (Civil Action No. 05-1392 ESH). No grants would be awarded for research that requires a permit, except for those activities authorized under existing permits. When the existing permits expire, all research activities that require a permit would cease.

This alternative would allow researchers to only use techniques that do not disturb animals in the wild, in order to monitor the populations and collect information pertinent to their recovery. Research under this alternative would not involve approaching or capturing animals to collect data. Research techniques could include remote sensing, behavioral observations, scat collection from vacant haulouts and rookeries, and aerial surveys conducted at distances and conditions that are not likely to result in takes (and therefore would not require permits). Researchers could obtain permits and be awarded grants for receipt and use of tissue samples from Alaska Natives who agree to provide samples from animals that have been taken legally for subsistence harvest and for receipt and use of tissues from animals that have been found dead (stranded) due to other causes.

Research on captive SSLs and NFSs (those already in captivity at this time) would be unaffected by these alternatives, which are specific to permits for research on free-ranging animals. However, under the No Action alternative, no additional SSLs or NFSs could be brought into captivity, either by removal from the wild or via captive breeding. There would be no change in geographic restrictions, such as the 3 nautical miles (nm), no approach buffer areas near rookery sites and the one-half statutory mile on land. These geographic restrictions are described in detail in Chapter 2 of this document.

Alternative 2 – Research Program without Capture or Handling

The policy direction of this alternative would be to issue permits and provide grant support to conduct research on SSLs and NFSs using methods that do not involve capture, restraint, tissue sampling, or risk causing animals to leave rookeries during the breeding season. This alternative would also prohibit intrusive research, where intrusive is defined in 50 CFR 216.3 to mean a procedure conducted for bona fide scientific research involving: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). This restriction on intrusive activities would essentially limit research to census surveys and behavioral observations that have a very small potential to cause injury to animals. Under Alternative 2, the total amount of incidental mortality allowed under all permits and authorizations would not exceed 5 percent of PBR for each stock. No intentional lethal take would be authorized under Alternative 2.

Scat collection would be allowed but only from haulouts and rookeries during the non-breeding season. For research on rookeries during the breeding season, observers and remote sensing equipment would need to be placed on sites at times and in such a manner as to avoid disturbing animals. No activities involving capture, restraint, or disturbance of animals on rookeries during the breeding season would be permitted but disturbance on haulouts for resighting efforts and scat collection could be authorized. It is assumed that, under this alternative, more emphasis would be placed on developing remote sensing and other techniques that allow collection of physiological and nutritional data without capturing animals than under the Status Quo. It is likely that under this alternative there would be a higher amount of survey and observational takes requested compared to the Status Quo, as researchers would re-allocate funds and other resources away from projects that would not be permitted. Under this alternative it is assumed that the same level of non-intrusive activity for research on other marine

mammal species, especially other pinnipeds such as California sea lions, as under the Status Quo alternative would occur.

Alternative 3 – Status Quo Research Program

Under the Status Quo process, permits are issued to conduct research according to the scope and methods requested in the permit applications, with restrictions and mitigation measures required by the MMPA, ESA, and NMFS implementing regulations. Alternative 3 would implement the existing grant and permit process, which flexibly accommodates changes in funding levels, management priorities, scientific interests, research techniques, population status, and threats to the populations' recovery. Proposed research programs for SSLs must have impacts at a level below that which would jeopardize the continued existence of the species or result in adverse modification of critical habitat, as required by Section 7 of the ESA.

The scope of research activities conducted under this alternative depends substantially on the amount of funding that is available. Funding for SSL research peaked in 2001 and 2002, but has since decreased. For the purposes of this PEIS, the amount of funding and level of associated research on SSLs will be assumed to have reached peak levels under the permits issued at or before the initiation of this PEIS. For the purpose of analyzing the effects of that scope of research, the average number, types, and distribution of takes allowed by all permits before the court order will be used for the analysis of effects of this alternative. A peak funding and permit level probably has not been met for NFSs. Funding levels for research on NFSs have recently increased, as has interest in obtaining permits for research on this species. Depending on future funding opportunities and interest among the research community, both of which are linked to factors such as population trends, and speculation about the contribution of commercial fisheries and other factors to population status and prospects, funding for research on NFSs may increase over time. However, new permits have not been issued, pending completion of this PEIS. Thus, for this analysis we have used the number, types, and distribution of takes allowed by all permits approved by January 2006.

Under the Status Quo alternative, new permits would be issued for the same type and scope of research as occurred under SSL permits that existed before the court order vacated them in May 2006. It would also include all other existing permits for research on SSLs and NFSs that were not affected by that order (Appendix A). New permits would be issued to replace permits as they expire, such that the levels and types of research activities would continue to the extent that funding allowed. Under Alternative 3, the total amount of incidental mortality allowed under all permits and authorizations would not exceed 10 percent of PBR for each population.

New requests for permits and amendments to existing permits would be considered on a case-by-case basis and would be granted as long as the applicants satisfied all permit issuance criteria, including having a bona fide research project that was likely to contribute to recovery of the depleted, threatened, or endangered species. Under this alternative, each new permit request would be evaluated separately during Section 7 consultation, against the baseline of impacts from whatever permits were in effect at the time of the request. New permits would only be denied if it were determined that issuance would exceed the ESA jeopardy or adverse modification threshold when impacts were added to existing research and other activities in the baseline at the time the application was received.

Alternative 4 - The Preferred Alternative – Research Program with Full Implementation of Conservation Goals

This alternative would include not only those specific activities currently or previously permitted but any additional research activities or methods that are needed to implement the 2006 Draft Revised Recovery Plan for Steller Sea Lion (NMFS 2006a) (hereafter referred to as the 2006 Draft Recovery Plan) and the new revised 2006 Draft Conservation Plan for NFS (NMFS 2006b) (hereafter referred to as the 2006 Draft Conservation Plan), assuming they are consistent with the MMPA, ESA, and NMFS implementing regulations. These plans are discussed in more detail in Sections 3.2.1 and 3.2.2 and are included in their entirety in Appendix C.

Many of the research activities related to priorities listed in the 2006 Draft Recovery Plan have been used by past and current research programs under the Status Quo permits. However, there are some research questions listed in the plan that have not received adequate attention in the past, at least for certain sex/age classes. Some of these research questions may require use of techniques or protocols that have not previously been requested or permitted on SSLs and NFSs. As such, they may involve unique or uncertain risks to the animals.

Under Alternative 4, NMFS would consider proposals for research that posed a higher risk of injury to individual animals, including intentional lethal take of moribund animals or other specified individuals, if the permit applicant could demonstrate that the research had a reasonable chance of providing significant data relevant to conservation of the species. Permit issuance criteria under the MMPA and ESA would still prohibit research from putting the species at a disadvantage or in jeopardy. Under Alternative 4, the total amount of incidental mortality allowed under all permits and authorizations would not exceed 15 percent of PBR for each population.

Regarding the eastern DPS, the 2006 Draft Recovery Plan recommended the initiation of a status review to consider removing the eastern DPS from the ESA's List of Threatened and Endangered Wildlife. Key components of this plan relative to research activities have not been prioritized in the SSL plan but would be likely to include population trend monitoring, genetics research to refine population structure, monitoring terrestrial habitat threats, monitoring for unusual mortality events that may be related to contaminants or other human factors, and monitoring of fishery management plans to ensure that these remain consistent with SSL requirements. These are activities that have been permitted under the Status Quo and would be considered under Alternative 4.

Alternative 4 represents an extensive research program that would be able to simultaneously address multiple issues over a huge geographical space. To be fully implemented, such a program would require a much larger research budget than is currently allocated to these species. It would also require greater administrative support for the Grants, Permits, and Regional Offices of NMFS in order to process the large number of projects efficiently. For the purposes of this PEIS, it is assumed that the grants and permits processes will be essentially the same as under the Status Quo. However, if adequate funding was available to implement this expanded research program, it is likely that NMFS would adopt one or more of the measures, discussed in Chapter 5, to expedite the review process and to improve communication and coordination, not only between researchers, but between the various branches of NMFS involved in the research program, the Alaska Native communities affected by research, other federal and state agencies, and the general public.

As the Preferred Alternative, this approach allows the agency to fully implement the recommendations in the species' conservation and recovery plans. Full implementation of the plans would lead to a better understanding of these species, more informed management decisions and the prospect of recovery.

Table ES-2
Research Activities Allowed Under Each Alternative

Research Activities	Alternative 1 No Action: No New Permits or Authorizations	Alternative 2 Research Program Without Capture or Handling	Alternative 3 – Status Quo Research Program	Alternative 4 Research Program with Full Implementation of Conservation Goals
Research activities on live animals with NO capture, restraint, or collection of tissues				
Aerial surveys	*	√	√	√
Vessel surveys	*	√	√	√
Ground surveys	*	√	√	√
Scat collection	*	√	√	√
Remote video/photographic monitoring	*	√	√	√
Receipt of tissue samples from Alaska Natives that have taken the animal legally for subsistence harvest	√	√	√	√
Receipt of tissue samples from animals found dead from other causes	√	√	√	√
Research activities on live animals that requires capture, restraint, or collection of tissues				
Collection of morphometric measurements	–	–	√	√
Collection of blood samples	–	–	√	√
Muscle biopsies	–	–	√	√
Skin biopsies	–	–	√	√
Blubber samples	–	–	√	√
Fecal and fluid samples	–	–	√	√
Extraction of pre-molar teeth	–	–	√	√
Collection of vibrissae, hair, and nails	–	–	√	√
Enema or stomach intubation	–	–	√	√
Bioelectric Impedance Analysis	–	–	√	√
Ultrasound	–	–	√	√
Stable isotope injection	–	–	√	√
Chromic oxide and Co-EDTA	–	–	√	√
Temporary marking	–	–	√	√

Table ES-2 (continued)
Research Activities Allowed Under Each Alternative

Research Activities	Alternative 1 No Action: No New Permits or Authorizations	Alternative 2 Research Program Without Capture or Handling	Alternative 3 – Status Quo Research Program	Alternative 4 Research Program with Full Implementation of Conservation Goals
Research activities on live animals that requires capture, restraint, or collection of tissues				
Attachment (external) of scientific instruments measurements	--	--	√	√
Attachment (external) of scientific instruments measurements	--	--	√	√
Insertion/implantation (internal) of instruments	--	--	√	√
Temporary captivity	--	--	√	√
Intentional take of animals	--	--	--	√

Note: * No new permits or authorizations would be issued under Alternative 1. However, grants could be issued and surveys, observations, and scat collections could occur under circumstances that would not result in disturbance or takes.

Key: – Not Allowed
√ Allowed

Alternatives Not Carried Forward for Analysis

A research moratorium, which would involve not allowing any research and revoking all active research permits, was not carried forward because it would not be consistent with NMFS legal mandates; to monitor the status of marine mammals and recover threatened and endangered species. A permanent "no research" policy would end all research activities and compromise NMFS' ability to monitor distribution and abundance of the species. Without some level of research surveys, NMFS would not be able to monitor the status of the endangered population, nor assess whether protective measures, such as regulations prohibiting fishing in critical habitat, were achieving the desired effect on recovery of the species.

Alternatives that would allow research not consistent with the requirements of the MMPA and ESA, or with NMFS implementing regulations, were also not carried forward because they would not meet the minimum environmental standards established by these laws, or would require revision of the statutes by Congress. For example, an alternative that would allow researchers to conduct research using methods that would not meet the humane standard under the MMPA or that would not be likely to contribute to conservation of the endangered species that was the subject of the permit, as required by the ESA, was not considered further because it would not meet these minimum requirements of the statutes governing research on protected species. Similarly, an alternative that would allow research permits to be issued for an indefinite time period, or for longer than five years, was not carried forward because it would not meet the minimum requirements for permits as currently stipulated in NMFS implementing regulations. It is not within the scope of this PEIS to address the substantial impediments to changing the governing laws (i.e., ESA, MMPA, and NEPA) and regulations concerning research on marine mammals.

ES-7.0 Summary of Environmental Consequences

Alternative 1 – No Action: No New Permits or Authorizations

Research conducted under Alternative 1 would not cause any mortalities or sub-lethal effects on SSLs or NFSs in the wild. Due to previously collected data and samples, research conducted under Alternative 1 would provide a minor amount of information to support the conservation objectives listed in the Recovery Plan.

Alternative 2 – Research Program without Capture or Handling

With the restrictions on authorized research methods, researchers might choose to expand efforts with non-intrusive techniques or might elect not to pursue research on SSLs and NFSs. In other words, the level of non-intrusive research authorized could be more or less than the Status Quo, depending on the response of individual researchers and agencies to the policy represented in this alternative. For the purposes of analysis, the number of takes under each research activity will be defined as the numbers of animals affected by non-intrusive research activities under the Status Quo for those activities (see mortality assessment Tables 4.8-1, -2, -13, -14, -25, -26, -37, and -38).

For the western DPS of SSLs, estimated mortality from research activities under Alternative 2 is 3.4 SSLs per year (1.5 percent of PBR) which is considered negligible on the population level. The magnitude of sub-lethal effects as they relate to population level changes in productivity under Alternative 2 is unknown. Research conducted under Alternative 2 could provide a moderate amount of information to support the conservation objectives listed in the Recovery Plan. For the eastern DPS of SSLs and both populations of NFSs, estimated mortality from research activities under Alternative 2 is less than 1 percent of PBR and is considered negligible. For all of these populations, the conclusions regarding sub-lethal effects and the contribution to conservation objectives are similar to those stated above for the western DPS.

Alternative 3 – Status Quo Research Program

For Alternative 3, the numbers of animals exposed to different research activities is taken directly from the permits that were valid on January 1, 2006, including those permits that were subsequently vacated by court order on May 26, 2006 (Civil Action No. 05-1392 [see mortality assessment Tables 4.8-3 through 4.8-7, 4.8-15 through 4.8-19, 4.8-27 through 4.8-31, and 4.8-39 through 4.8-43]). It does not include activities that had been applied for (permits or amendments) but not yet authorized at the time this PEIS was initiated. For survey and monitoring types of activities, the number of animals exposed to potential disturbance depends on how many animals are in a particular place at a particular time. To account for potential interannual variation in the distribution and abundance of animals within a survey area, researchers are encouraged to estimate the maximum number of animals that could be exposed (surveyed). Researchers generally estimate this number based on information in Stock Assessment Reports (SARs) and previous experience. When applying for permits, researchers may add a "buffer" to this maximum number of animals to make sure they do not exceed their permit allowance should the actual number of animals encountered be greater than predicted.

For some activities, such as capture of juveniles at sea, researchers have applied for and received permits to capture a specific number of animals. However, due to financial constraints or the logistical difficulty of capturing animals, the actual number of captures has been less than the number authorized. For procedures that are intended to test specific hypotheses or provide statistically robust data for modeling or other applications, the number of animals requested to be captured or sampled may be based on a "power analysis" determination of sample size. Such statistical power calculations depend on the level of statistical resolution needed to either test the hypothesis or detect an environmental pattern (the effect). In all cases, the analysis of effects will be based on the number of takes authorized in the permits rather than the number of actual takes reported after the field season.

For the western DPS of SSLs, estimated mortality from research activities under Alternative 3 is 15 SSLs per year (6.3 percent of PBR) which is considered negligible on the population level. The magnitude of sub-lethal effects as they relate to population level changes in productivity under Alternative 3 is unknown. Research conducted under Alternative 3 could provide a significant amount of information to support the conservation objectives listed in the Recovery Plan. For the eastern DPS of SSLs, estimated mortality from research activities under Alternative 3 is 26 SSLs per year (1.3 percent of PBR) which is considered negligible on the population level. For the eastern NFSs, estimated mortality is less than 1 percent of PBR and is considered negligible. For the San Miguel Island NFS, estimated mortality is 5 NFSs per year (2.3 percent of PBR) which is considered negligible. For the eastern DPS of SSLs and both populations of NFSs, the conclusions regarding sub-lethal effects and the contribution to conservation objectives are similar to those stated above for the western DPS.

Alternative 4 – The Preferred Alternative - Research Program with Full Implementation of Conservation Goals

Alternative 4 includes all research activities that would be needed to address all information objectives identified in the 2006 Draft Recovery Plan SSL (NMFS 2006a). While such a program would be likely to require a substantial increase in future funding levels and the sources of that funding have not yet been established, it will be assumed for the purposes of this PEIS analysis that sufficient funding would be secured to implement an expanded research program under Alternative 4.

This alternative would include the same types of research as described in the Status Quo, plus activities that have not been authorized under the Status Quo, including new permits and permit amendments that were pending as of January 2006. It could also include some types of techniques and activities that have not been previously requested or authorized, including intentional lethal take. The scope of research required to address all 2006 Draft Recovery Plan objectives has been estimated by NMML (see mortality assessment Tables 4.8-8 through 4.8-12, 4.8-20 through 4.8-24, 4.8-32 through 4.8-36, and 4.8-44 through 4.8-48) and is used in this analysis as a proxy for the scope of proposals that would arise from many sources under a favorable funding environment.

For the western DPS of SSLs, estimated mortality from research activities under Alternative 4 is 35 SSLs per year (12.7 percent of PBR), which is considered minor on the population level. The magnitude of sub-lethal effects as they relate to population level changes in productivity under Alternative 4 is unknown. Research conducted under Alternative 4 could provide a significant amount of information to support the conservation objectives listed in the Recovery Plan. For the eastern DPS of SSLs and both populations of NFSs, the scope of research conducted under Alternative 4 would be the same as under Alternative 3 and would yield the same conclusions regarding mortality (negligible), sub-lethal effects (unknown), and contribution to conservation objectives (major).

Cumulative Effects

The 2006 Draft Recovery Plan and the 2006 Draft Conservation Plan identified a host of anthropogenic and natural factors that could be contributing to the cumulative effects on these populations. The contribution of research activities to these cumulative effects is discussed, especially with regard to potential mortality, sub-lethal effects through disturbance and injury, and efforts to promote conservation of the species.

The primary contributors to cumulative anthropogenic mortality for the western DPS of SSLs are subsistence harvest (average 191 animals per year) and incidental take in fishing gear (average 25 animals per year). This totals 216 animals per year, which is 92 percent of PBR for this population (234 animals). Alternative 1 would contribute no mortalities to this total and would therefore have no cumulative effect on mortality. Alternative 2 would contribute an estimated 3 mortalities per year, raising the overall total to about 219 animals, which is 94 percent of PBR. Alternative 3 would contribute an estimated 15 mortalities per year, raising the overall total to about 230 animals, which is 98 percent of PBR. Alternative 4 would contribute an estimated 30 mortalities per year, raising the overall total to about 245 animals, which is 105 percent of PBR. Under the criteria developed to assess the impacts of the alternatives on the population level (Table 4.4-1), the estimated mortality due to research is considered negligible under Alternatives 1, 2, and 3 and minor under Alternative 4. Using the same impact

criteria, the cumulative level of mortality for this population would be considered major under all alternatives even though the contribution of research would be negligible or minor. The cumulative levels of anthropogenic mortality for the eastern DPS of SSLs and both populations of NFSs are well below 10% of PBR under all alternatives and are considered negligible.

The conclusion of a major cumulative effect from mortality for the western DPS of SSLs in this NEPA analysis does not mean that the population would decline under any of the alternatives. The impact criteria developed for this PEIS are based on thresholds of fishery related mortality that result in major regulatory changes to the fisheries. These thresholds of mortality are expressed as a percentage of PBR. The formula for PBR, as defined in the MMPA, is a precautionary or conservative measure of human-caused mortality that could be expected to affect a marine mammal population's ability to recover from a depleted state. The formula compensates for uncertainties that might prevent population recovery, such as biases in the estimation of population size, reproductive rate, or stock structure. For endangered marine mammals such as the western DPS of SSLs, the formula reserves 90 percent of the population's annual net production for recovery of the stock. This means that human-caused mortalities that exceeded PBR would not cause the population to decline (unless human-caused mortality accounted for all of the annual net production, [i.e., 1,000 percent of PBR]), but could slow the rate at which the population recovers. Total cumulative human-caused mortalities approaching or slightly above 100 percent of PBR, as what occurs under all of the alternatives, would therefore be unlikely to cause the population to decline but could slow its recovery.

Tables ES-3 through ES-10 provide summaries of the environmental consequences of the alternatives on biological and socioeconomic resources analyzed in this PEIS.

NOAA Fisheries
National Marine Fisheries Service
Alaska Region
NEWS RELEASE
P.O. Box 21668, Juneau, Alaska 99802-1668

CONTACT:
Sheela McLean, (907) 586-7032

NMFS 07-AKR
April 19, 2007

NOAA Recommends Listing Cook Inlet Belugas Under Endangered Species Act

The National Oceanic and Atmosphere Administration's National Marine Fisheries Service (NOAA Fisheries Service) is proposing to list the Cook Inlet beluga whale population as endangered under the Endangered Species Act. The number of beluga whales in Cook Inlet waters near Anchorage has dwindled to an estimated 302 animals and is at risk of going extinct within 100 years.

The population has not achieved the expected growth rate of 2 to 6 percent that is typical of smaller whale populations. In fact, recent data indicate this population has declined 4.1 percent annually since 1999, with a 5.6 percent annual decline since surveys started in 1994. NOAA Fisheries Service estimated Cook Inlet belugas have a 26 percent probability of extinction within 100 years and a 68 percent probability of extinction within 300 years. Cook Inlet belugas are estimated to have numbered as many as 1,300 as recently as the 1970s.

Scientists have not yet answered the question of why the Cook Inlet beluga population is not recovering as anticipated since the subsistence hunt was curtailed in 1999. Hunting has been significantly curtailed (five whales taken since 1999), and other stresses on the Cook Inlet population are comparable to those of beluga populations in Canada and other parts of Alaska.

"We have worked with Alaska Native hunters to attain a manageable level of subsistence harvests in Cook Inlet and hoped this would bring about a recovery within the population" said Doug Mecum, acting administrator for the Alaska Region of NOAA Fisheries Service. "The anticipated recovery has not occurred."

The group Trustees for Alaska petitioned NOAA Fisheries in April 2006 to list the Cook Inlet belugas as an endangered species. NOAA Fisheries found the action might be warranted, and prepared the 'Status Review and Extinction Assessment of Cook Inlet belugas (Delphinapterus leucas)'. The current recommendation to list the Cook Inlet belugas is based on this review, as well as more than 14 years of NOAA Fisheries Service research on these whales.

The agency will receive public comment on this proposed listing. The comment period ends June 19, 2007. Methods for submitting public comments on the proposed rule will be in the federal register notice, to be posted tomorrow at www.fakr.noaa.gov. Under the Endangered Species Act, NOAA Fisheries Service has one year to finalize the decision to list the Cook Inlet belugas.

The Endangered Species Act requires designation of critical habitat at the time of listing unless insufficient information exists to identify critical habitat. In such case, the listing agency can extend the time for designation by one year from the date of the final rule listing the species. NOAA Fisheries Service is not proposing to designate critical habitat at this time. Biologists have not yet been able to identify the features of the habitat essential for the conservation of the Cook Inlet Beluga population. Therefore NOAA Fisheries Service plans to use the additional year to identify critical habitat.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 7	At the confluence with West Fork Sandy Run	None	+825	Rutherford County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with West Fork Sandy Run.	None	+842	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Bostic

Maps are available for inspection at the Bostic Town Hall, 104 Pearidge Road, Bostic, North Carolina.
Send comments to The Honorable Mitch Harrill, Mayor of the Town of Bostic, 177 South Main Street, Bostic, North Carolina 28018.

Town of Forest City

Maps are available for inspection at the Forest City Town Hall, 128 North Powell Street, Forest City, North Carolina.
Send comments to Mr. Charles Summey, II, Forest City Town Manager, P.O. Box 728, Forest City, North Carolina 28043.

Town of Lake Lure

Maps are available for inspection at the Lake Lure Town Hall, 2948 Memorial Highway, Lake Lure, North Carolina.
Send comments to The Honorable James Proctor, Mayor of the Town of Lake Lure, P.O. Box 255, Lake Lure, North Carolina 28746.

Town of Ruth

Maps are available for inspection at the Ruth Town Hall, 199 Northview-Dorsey Street, Ruth, North Carolina.
Send comments to The Honorable Don Baynard, Mayor of the Town of Ruth, 108 Northview-Dorsey Street, Ruth, North Carolina 28139.

Town of Rutherfordton

Maps are available for inspection at the Rutherfordton Town Hall, 129 North Main Street, Rutherfordton, North Carolina.
Send comments to The Honorable Sally Lesher, Mayor of the Town of Rutherfordton, 447 North Washington Street, Rutherfordton, North Carolina.

Town of Spindale

Maps are available for inspection at the Spindale Town Hall, 104 Reveley Street, Spindale, North Carolina.
Send comments to The Honorable Mickey Bland, Mayor of the Town of Spindale, P.O. Box 186, Spindale, North Carolina 28160.

Unincorporated Areas of Rutherford County

Maps are available for inspection at the Rutherford County Building and Inspections Department, 289 North Main Street, Rutherfordton, North Carolina.
Send comments to Mr. John Condrey, Rutherford County Manager, 289 North Main Street, Rutherfordton, North Carolina 28139.

Village of Chimney Rock

Maps are available for inspection at the Village of Chimney Rock Office, 109 Terrace Drive, Chimney Rock, North Carolina.
Send comments to The Honorable Barbara Melisky, Mayor of the Village of Chimney Rock, P.O. Box 300, Chimney Rock, North Carolina 28720.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 10, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–7593 Filed 4–19–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 070319062–7062–01; I.D. 021607C]

RIN 0648–XB64

Endangered and Threatened Species; Proposed Endangered Status for the Cook Inlet Beluga Whale

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review of the Cook Inlet population of beluga whale (*Delphinapterus leucas*) under the Endangered Species Act (ESA). Based on the findings from the status review and consideration of the factors affecting this species, we have concluded the Cook Inlet beluga whale constitutes a distinct population segment (DPS) that is in danger of extinction throughout its range. Accordingly, we are now issuing a proposed rule to list the Cook Inlet beluga whale DPS as an endangered species. We are soliciting information on issues relevant to the listing of the Cook Inlet beluga whale DPS under the ESA. Although we are not proposing to designate critical habitat at this time, we are also soliciting information on essential physical and biological features of Cook Inlet beluga whale habitat.

DATES: Comments on this proposed rule must be received by close of business on June 19, 2007. Requests for public

hearings must be made in writing by June 4, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: *CIB-ESA-Endangered@noaa.gov*. Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.
- Mail: NMFS, P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : NMFS, 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7012

The proposed rule, status review, maps, a list of the references cited in this document, and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1999, we received two petitions to list the Cook Inlet population of beluga whales as endangered under the ESA. The petitioners requested that we promulgate an emergency listing under section 4(b)(7) of the ESA, designate critical habitat for Cook Inlet beluga whales, and take immediate action to implement rulemaking to regulate the harvest of these whales. We issued a Final Rule on May 31, 2000 (65 FR 34590), designating Cook Inlet beluga whales as depleted within the meaning of section 3(1) of the Marine Mammal Protection Act, as amended (MMPA) (below its Optimum Sustainable Population), and codified at 16 U.S.C. 1362(1), and the underlying regulations codified at 50 CFR Part 216. However, at that time, we determined that the Cook Inlet beluga whale DPS was not threatened or endangered under the ESA (65 FR 38778; June 22, 2000) because legislative and management actions had been taken to reduce subsistence harvests to levels that would allow recovery, such that the DPS did not meet the definition of threatened or endangered.

The 2000 determination that ESA listing was not warranted was premised on at least two findings that justify further review. First, the only factor then known to be responsible for the decline in beluga abundance was subsistence harvest. Second, the 2000 Status Review used simulation modeling efforts that demonstrated this DPS was not likely to decline further if the harvest was reduced and an annual increase of 2 to 6 percent were assumed. Abundance estimates since harvest management began in 1999 have declined at an average rate of 4.1 percent per year, challenging the original findings.

In addition, the International Union for the Conservation of Nature and Natural Resources (IUCN) assessed the status of the Cook Inlet beluga whale in 2005 (Lowry *et al.*, 2006). The IUCN determined that this population had a 71 percent probability of having a negative growth rate (in 2005) and met its criteria for critically endangered status.

In consideration of the factors described above, we initiated a second Status Review for the Cook Inlet beluga whale (71 FR 14836; March 24, 2006). In the 2006 Status Review, we developed population models that considered various types of mortality and fecundity effects in terms of the decline or growth and recovery of the Cook Inlet beluga whale DPS. In these models, NMFS scientists considered several effects, including: (1) An Allee effect on fecundity at small population sizes; (2) a depressed per capita fecundity or survival, as might occur from habitat degradation or pollution; (3) a constant mortality effect independent of population size, as would occur from predation; (4) a random mortality effect, as would result from environmental perturbations or catastrophic events such as oil spills or volcanic activity; and (5) demographic stochasticity due to reduced population size. Models with these different effects were compared to the beluga population estimates from 1994 to 2005 to determine which model best matched the data, and likely outcomes were determined for the population.

Subsequently, we received a third petition to list the Cook Inlet beluga as an endangered species on April 20, 2006. That petitioner requested that we list the Cook Inlet beluga whale as endangered and designate critical habitat. The petitioner reviewed the biology and ecology of this population, its abundance and distribution, its designation as a DPS established through rulemaking in June 2000 (65 FR 38780), and the reasons for the Cook Inlet beluga whale's status (organized by the factors listed in section 4(a) (1) of the ESA). In response to this petition, we published a 90–day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). The second Status Review (NMFS, 2006) has now been completed and underlies this proposed rule.

Description, Taxonomy, and Distribution

Beluga whales, members of the Family Monodontidae, are small, toothed whales that are white in color as adults. They are extremely social animals that are often found in groups numbering from ten to several hundred. Beluga whales are circumpolar in distribution and occur in seasonally ice-covered arctic and subarctic waters. Beluga whales occur along the coast of Alaska, except the Southeast panhandle region and the Aleutian Islands. Five distinct stocks are currently recognized in Alaska: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet (Angliss and Outlaw, 2005).

Abundance and Trends

The Cook Inlet population of beluga whales has probably always numbered fewer than several thousand animals, but has declined significantly from its historical abundance. It is difficult to accurately determine the magnitude of decline because there is no available information on the beluga whale population that existed in Cook Inlet prior to development of the south-central Alaska sub-Region, or prior to modern subsistence whaling by Alaska Natives. With no reliable abundance surveys conducted prior to the 1990s, scientists must estimate historical abundance. Portions of Cook Inlet surveyed during 1979 resulted in an abundance estimate of 1,293 beluga whales (Calkins, 1989). Those data represent the best available information on historical abundance.

We began comprehensive, systematic aerial surveys on beluga whales in Cook Inlet in 1993. These surveys documented a decline in abundance of nearly 50 percent between 1994 and 1998, from an estimate of 653 whales to 347 whales (Hobbs *et al.*, 2000).

After legislative measures were established in 1999 to regulate subsistence harvests, we had expected the population to grow at a rate between 2 and 6 percent. However, abundance estimates from aerial surveys (1999–2006) indicate this level of growth did not occur. Differences in survey methods and analytical techniques prior

to the 1994 survey rule out a precise statistical assessment of trends using the available population estimate from 1979. However, a comparison of the 1,293 beluga estimate in 1979 to 302 belugas in 2006 indicates a 77 percent decline in 27 years, but with unspecified confidence. This decline was mostly attributed to the subsistence harvest (through 1998); however, even with the restrictions on this harvest, the population continued to decline 4.1 percent per year.

Review of "Species" Identification Under the ESA

The ESA requires the Secretary of Commerce to determine whether species are endangered or threatened. The authority to list a "species" under the ESA is not restricted to species as recognized in formal taxonomic terms, but extends to subspecies and, for vertebrate taxa, to DPSs. NMFS and U.S. Fish and Wildlife Service (USFWS) issued a joint policy to clarify their interpretation of the phrase "distinct population segment" for the purposes of listing, de-listing, and reclassifying species under the ESA (61 FR 4722; February 7, 1996). The policy describes two elements to be considered in deciding whether a population segment can be identified as a DPS under the ESA: (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment in relation to the remainder of the species to which it belongs.

DPS Analysis

Under the first element of the joint DPS policy, we found during our previous status review that the Cook Inlet beluga whale population is discrete because it is markedly separated from other populations of the same species (65 FR 38778; June 22, 2000). Of the five stocks of beluga whales in Alaska, the Cook Inlet population was considered to be the most isolated, based on the degree of genetic differentiation and geographic distance between the Cook Inlet population and the four other beluga stocks (O'Corry-Crowe *et al.*, 1997; 2002). This suggested that the Alaska Peninsula is an effective physical barrier to genetic exchange. The lack of beluga observations along the southern side of the Alaska Peninsula (Laidre *et al.*, 2000) also supported this conclusion. Murray and Fay (1979) stated that the Cook Inlet beluga population has been isolated for several thousand years, an idea that has since been corroborated by genetic data (O'Corry-Crowe *et al.*, 1997).

Under the second element, two factors we considered in determining whether this discrete population segment was significant to the remainder of the species were: (1) persistence in an ecological setting that is unique; and (2) whether the loss of the discrete population segment would result in a significant gap in the range of the species.

Cook Inlet is a unique biological setting in terms of these belugas because it supports the southernmost of the five extant beluga populations in Alaska, and is the only water south of the Alaska Peninsula, or within the Gulf of Alaska, which supports a viable population of beluga whales. The ecological setting of Cook Inlet is also unique in that it is characterized as an incised glacial fjord, unlike other beluga habitats to the north. Cook Inlet experiences large tidal exchanges and is a true estuary, with salinities varying from freshwater at its northern extreme to marine near its entrance to the Gulf of Alaska. No similar beluga habitat exists in Alaska or elsewhere in the United States.

In the 2000 Status Review, the Cook Inlet beluga whale population segment was considered to be the only beluga population that inhabits the Gulf of Alaska, and genetic data showed no mixing with other beluga population segments. Therefore, we determined that the loss of the Cook Inlet beluga population segment may result in the complete loss of the species in the Gulf of Alaska, with little likelihood of immigration from other beluga population segments into Cook Inlet.

Because we found that the Cook Inlet beluga whale population was discrete and significant, we determined that it constituted a DPS under the ESA (65 FR 38778; June 22, 2000).

Research to Support Isolation Between the Cook Inlet DPS and Yakutat Belugas

New research has become available since the species determination in the 2000 Status Review regarding the beluga whales that occur in Yakutat Bay, Alaska. These whales were included in the previous Cook Inlet beluga whale DPS. The Yakutat group consists of 12 belugas that are regularly observed in Yakutat Bay and have existed there as early as the 1930s (G. O'Corry-Crowe *et al.*, 2006). Since the 2000 Status Review, we have obtained biopsy samples from five individual whales that provide genetic information on their relationship to other Alaska belugas. That evidence (NMFS, unpublished data) shows the Yakutat group demonstrates a high degree of similarity in genetic markers, indicating that members of the Yakutat group likely comprise a single lineage or family (O'Corry-Crowe *et al.*, 2006). All five individuals possessed a common mtDNA haplotype (#2), a maternal lineage that is also found within other Alaska beluga whale stocks, including the Cook Inlet DPS. While small sample size precluded meaningful statistical analyses of differentiation, Haplotype #2 occurs at a much lower frequency in Cook Inlet and other stocks. The samples were also analyzed for polymorphism at 8 independent microsatellite loci. Preliminary DNA fingerprint analysis of the samples from the five individuals indicates that these individuals share, on average, a higher proportion of alleles at these loci than the average for belugas in other areas, suggesting that the Yakutat whales may be relatively more closely related to each other than to belugas in other areas. As with the mtDNA analysis, small sample size precluded meaningful analyses of population structure. However, these genetic results indicate that the sampled whales differ from a random sample of the Cook Inlet population. This, taken with the sighting data and behavioral observations, suggests that a small group of beluga whales may reside in the Yakutat Bay region year-round, and that these whales are reproductive, have a unique ecology, and a restricted seasonal home range.

Pursuant to the DPS Policy, geographic separation can also provide an indicator that population segments are discrete from each other. There is a large geographic separation (approximately 621 mi (1000 km)) between the Yakutat beluga group and the Cook Inlet beluga population segment, and no records exist that show any association between these whales. Therefore, we conclude that the Cook Inlet beluga population segment is discrete from this Yakutat beluga group.

NMFS considers the viability of an isolated group of 12 belugas to be low. Therefore, the loss of the Cook Inlet beluga population segment may result in the complete loss of the species in the Gulf of Alaska, with little likelihood of immigration from other beluga population segments into Cook Inlet.

Other beluga whale sightings have been recorded from the Gulf of Alaska, including Sitka, Prince William Sound, and Kodiak Island. However, none of these individuals represent persistent groups, and, therefore, are not considered part of the Cook Inlet DPS. We have insufficient information at this time to determine whether these whales are part of the Cook Inlet DPS.

DPS Conclusion

Based on the best available scientific information, we had previously determined that Cook Inlet beluga whale is a DPS, and, therefore, a species under section 3(15) of the ESA (65 FR 38778; June 22, 2000). At the time, the data were insufficient to distinguish the whales near Yakutat from the Cook Inlet population. However, genetic results and the fact that the 12 belugas in the Yakutat group are regularly observed in Yakutat Bay and not in Cook Inlet (O'Corry-Crowe, 2006) lead us to conclude that the Cook Inlet beluga whales are discrete from beluga whales near Yakutat. The conclusion reached in 2000 that the Cook Inlet population segment is significant to the beluga whale species remains valid for the same reasons mentioned in 2000, and is further supported by the information stated above regarding the low viability of the Yakutat group and the resultant potential for loss of beluga whales from Cook Inlet. Therefore, we conclude, given the best scientific information available, the Cook Inlet beluga whales comprise a DPS which is confined to waters of Cook Inlet, and does not include beluga whales found in Yakutat or other Gulf of Alaska waters beyond Cook Inlet. Through this rulemaking, we propose to modify the present description of the Cook Inlet beluga whale DPS, which is considered a species under the ESA, by removing those beluga whales occurring near Yakutat or outside Cook Inlet waters.

Geographic Range of the Species

The range of Cook Inlet belugas has been previously defined as the waters of the Gulf of Alaska north of 58° N and freshwater tributaries to these waters based on available scientific data in 2000 (65 FR 34590; May 31, 2000; MMPA Sec. 216.15(g)). There are few beluga sightings in the Gulf of Alaska outside Cook Inlet. Laidre *et al.* (2000) summarized available information on prehistoric to current distribution of belugas in the Gulf of Alaska, and, with the exception of Yakutat, sightings have been rare and sporadic given the extent of the survey efforts. Of 169,550 cetacean sightings recorded in the Gulf of Alaska prior to the year 2001, excluding Cook Inlet, only 44 were beluga (Laidre *et al.*, 2000), indicating they are extremely rare in the Gulf of Alaska outside Cook Inlet.

Calkins (1989) described belugas in Cook Inlet, Prince William Sound, Yakutat Bay, and throughout the coastal waters of the Gulf of Alaska, from the northern portions of Kodiak Island to Yakutat. In the 1970s and 1980s, beluga sightings occurred across much of mid- and upper Cook Inlet (Calkins, 1984), but in the 1990s the summer distribution diminished to only the northernmost portions of Cook Inlet (Rugh *et al.*, 2000). More of the Inlet was used by beluga whales during the spring, summer, and fall during the 1970s and 1980s than is presently used; for instance, sightings in the Kenai River area were common, and beluga concentrations were reported in Trading Bay and Kachemak Bay (Calkins, 1984). Such areas are rarely used by belugas at the present time, except perhaps in winter.

To identify Cook Inlet beluga habitat use, particularly in winter, NMFS researchers placed satellite positioning tags on 18 beluga whales between 1999 and 2002. Those tagged whales remained in Cook Inlet, indicating that belugas occupy Cook Inlet year round and do not display the seasonal migrations that northern beluga populations display. Considering this research and the genetic information discussed above, we conclude the present range of the Cook Inlet beluga is limited to Cook Inlet waters north of a line from Cape Douglas to Cape Elizabeth.

Extinction Risk Assessment

NMFS' Status Review includes an extinction risk assessment for this DPS through a detailed population viability analysis (PVA). The extinction risk analysis used population models developed specifically for the Cook Inlet beluga whale. These age and gender-structured models included parameters specific to this beluga population (e.g. reproductive age, calving intervals, natural mortality, random stranding events, killer whale predation, managed harvests, and episodic events such as oil spills). Ten thousand individual trials from the models were selected for analysis. From these, the "baseline" model (Model A in the Status Review), using no threshold effects, predicted a decline in 65 percent of the cases, and extinction within 300 years for 29 percent of the cases. The "most likely" model (Model H in the Status Review), which best approximated the current population (this assumed a single annual killer whale predation mortality and an unusual mortality event every 20 years), predicted the risk of extinction as 26 percent within 100 years (Shelden *et al.*, 2003). The risk analysis concluded that this probability would be much larger if the annual mortality rates assumed were increased by either killer whale predation or other means.

Small population viability is further compromised by the increased risk of inbreeding and the loss of genetic variability through drift, which reduces their resistance to disease and environmental change (Lacy, 1997; O'Corry-Crowe and Lowry, 1997). Estimates of genetic variation do not, at present, suggest that the Cook Inlet beluga whale DPS is highly inbred or that a critical amount of genetic variation has been lost through drift (O'Corry-Crowe *et al.*, 1997; Lowry *et al.*, 2006; G. O'Corry-Crowe, unpublished data), but this population is already at a population size where eventual loss of genetic variability is expected (Lowry *et al.*, 2006).

Summary of Factors Affecting Cook Inlet Beluga Whales

The ESA defines endangered species as a species "in danger of extinction throughout all or a significant portion of its range." Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, whether a species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

A discussion of these factors follows.

The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Habitat for this species has been modified by municipal, industrial, and recreational activities in upper Cook Inlet, where belugas concentrate. It is possible that the range of Cook Inlet beluga whales has been diminished by these activities, either individually or cumulatively. Rugh *et al.* (2000) indicated that the summer occurrence of Cook Inlet beluga whales shifted to the upper Inlet in recent decades, whereas historically, belugas were also found in the mid- to lower Inlet. Such a change could be due to habitat alteration or development, but could also be attributed to other factors. For example, the population reduction may have resulted in Cook Inlet beluga whales inhabiting only the preferred feeding areas (i.e., the upper Inlet) within their normal range. Therefore, the change in distribution does not necessarily reflect any reduction in habitat or habitat

quality in the mid- to lower Inlet. No information exists that beluga habitat has been modified or curtailed to an extent that it is likely to have caused the population declines observed within Cook Inlet.

However, concern is warranted for the continued development within and along upper Cook Inlet and the cumulative effects on important beluga habitat. Several significant developments within the upper Inlet are permitted or planned, which may have adverse consequences. These include: (1) Major expansion to the Port of Anchorage, which requires filling more than 135 acres of intertidal and subtidal habitat, with increased in-water noise from pile driving, dredging, and expanded port operations; (2) Port McKenzie expansion as a commercial port facility directly across a narrow portion of upper Cook Inlet from the Port of Anchorage; (3) the proposed Knik Arm Bridge, which would increase in-water noise with both construction and operational activities and would occupy a portion of upper Cook Inlet that is presently undeveloped and provides important beluga feeding and other habitats; and (4) construction and operation of a large coal mine and marine terminal along the west side of upper Cook Inlet, near the Native Village of Tyonek. Ongoing activities that may impact this habitat include: (1) continued oil and gas exploration, development, and production; and (2) industrial activities that discharge or accidentally spill pollutants (e.g., petroleum, seafood processing, ship ballast, municipal wastewater treatment systems, runoff from urban, mining, and agricultural areas). The extinction risk assessment indicates that very small increases in mortality for this DPS have large effects on its continued existence. Destruction and modification of habitat may result in "effective mortalities" by reducing carrying capacity or fitness for individual whales, with the same consequence to the population survival as direct mortalities. Therefore, threatened destruction and modification of Cook Inlet beluga whale DPS habitat contributes to the proposed endangered status.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A brief commercial whaling operation existed along the west side of upper Cook Inlet during the 1920s, where 151 belugas were harvested in 5 years (Mahoney and Sheldon, 2000). There was also a sport (recreational) harvest for beluga whales in Cook Inlet prior to enactment of the MMPA in 1972. We have no record on this harvest level. The 1979 whale survey by the Alaska Department of Fish and Game (Calkins, 1989) provided an abundance estimate of 1,293 whales. Although we are uncertain of the level of depletion and exploitation in 1979, this remains the largest population abundance estimate for the Cook Inlet beluga DPS. Based on this estimate, we used 1,300 belugas as the carrying capacity in the PVA for the extinction risk assessment (Hobbs *et al.*, 2006). With protections offered by the MMPA, commercial and recreational beluga harvest no longer contribute to endangering the Cook Inlet beluga whale DPS.

Beluga whales are also taken for scientific purposes, but this work requires authorization under the MMPA and cannot have more than a negligible impact on the stock. Invasive research such as beluga capture and tagging, and boat survey work, may temporarily displace whales from important habitats, including feeding habitat, and may rarely result in injury or mortality. The magnitude of this impact cannot be reasonably estimated, but we believe it is not a reason that would support a listing determination.

We are not aware of any live Cook Inlet belugas currently in aquaria and used for educational purposes. Therefore, educational purposes do not contribute to the proposed endangered status.

Disease or Predation

A considerable amount of information now exists on the occurrence of diseases in beluga whales, including Cook Inlet belugas, and the effects of these diseases on the species. This information is described in our draft Conservation Plan (see *http://www.fakr.noaa.gov/protectedresources/whales/beluga/mmpa/draft/conservationplan032005.pdf*). Diseases and parasites occur in Cook Inlet beluga whales. Despite the considerable pathology that has been done on belugas, nothing indicates that the occurrence of diseases or parasites has had a measurable impact on their survival and health. Therefore, diseases and parasites are not known to be factors that have led to the current status of the Cook Inlet beluga whale DPS.

Transient killer whales are a natural predator on beluga whales in Cook Inlet. Killer whale sightings in the upper Inlet (18 reported sightings in 27 years) appear to be relatively infrequent, and not all killer whales prey on marine mammals. However, killer whales are thought to take at least one Cook Inlet beluga per year (Shelden *et al.*, 2003).

Assessing the impact of killer whale predation on Cook Inlet beluga whales is difficult. Anecdotal reports often highlight the more sensational mortalities on beluga whales due to killer whales, thereby overemphasizing their impact. Further, some reports are from the early 1980s when beluga whales were more abundant and more widely distributed. Consequently, the predation reports are of minimal value in evaluating current killer whale impacts to the Cook Inlet beluga whale DPS. The loss of more than one beluga whale annually could impede recovery, particularly if total mortality due to predation would be near the recruitment level in the DPS. The best available information does not allow us to accurately quantify the mortality level due to killer whale predation or its effect on the DPS. However, continued removal of belugas in excess of one per year would have a significant effect on the extinction probability for the Cook Inlet beluga whale.

While disease and predation occur in the Cook Inlet beluga population and may affect reproduction and survival, neither appears to be a likely contributor to the observed decline. However, the present low population abundance and the gregarious nature of beluga whales predispose the population to significant consequences from disease and predation, which contributes to the probability of extinction, and, therefore, to the proposed classification as endangered under the ESA.

The Inadequacy of Existing Regulatory Mechanisms

The MMPA exempts Alaska Natives from the prohibitions on the taking of marine mammals, including beluga whales. Sections 101(b)(3) and 103 of the MMPA provide for subsistence harvest regulations for marine mammal stocks designated as depleted under that Act, after notice and administrative hearings as prescribed by the MMPA. Excessive harvests occurred before May 1999 when Public Law 106–31 required such taking of Cook Inlet beluga whales occur pursuant to a cooperative agreement between NMFS and affected Alaska Native organizations. This law, later made permanent by Public Law 106–553, did not specify a harvest level, nor present a harvest management plan. In May 2000, we designated the Cook Inlet belugas as a depleted stock under the MMPA. We promulgated interim harvest regulations that provided a harvest management plan from 2001 through 2004 (69 FR 17973; April 6, 2004). The absence of legal authority to control subsistence harvest prior to 1999

is considered a contributing factor to the Cook Inlet beluga whale DPS decline.

Annual co-management agreements have been signed between NMFS and the Cook Inlet Marine Mammal Council in compliance with Public Laws 106–31 and 106–553. We have worked extensively with experts, including Native hunters, to use the best available science and traditional knowledge in our management and conservation efforts. This includes workshops by NMFS, the Alaska Beluga Whale Committee, the Alaska Scientific Review Group, and the Cook Inlet Marine Mammal Council. A technical working group was appointed by an administrative law judge in 2005 to consider a Cook Inlet beluga harvest management plan for 2005 and subsequent years that would recover Cook Inlet belugas and allow for traditional subsistence. Harvests from this population have been restricted to zero, one, or two whales annually since 1999, due to cooperative efforts by Native hunters and NMFS. We are currently preparing a Draft Supplemental Environmental Impact Statement (SEIS) on the subsistence harvest management of Cook Inlet belugas. This Draft SEIS will be followed by a Final SEIS and harvest regulations. Harvest regulations will propose a harvest strategy based on the abundance and growth of the population and a population abundance "floor" below which no harvest would occur. Despite the limited harvests since 1999 (five belugas in 8 years), the Cook Inlet beluga whale DPS has declined 4.1 percent per year.

Other Natural or Manmade Factors Affecting its Continued Existence

Impacts of Past Subsistence Harvest Efforts

The Cook Inlet beluga whale has been hunted by Alaska Natives for subsistence purposes and for traditional handicrafts. The subsistence provisions under the MMPA allow the sale of edible products and traditional handicrafts from marine mammals in Alaska Native villages, including Anchorage, or for Alaska Native consumption. Muktuk (whale skin and underlying blubber layer) from Cook Inlet belugas was sold in Anchorage markets prior to 1999, after which the practice was prohibited by co-management agreements between NMFS and the Cook Inlet Marine Mammal Council. Alaska Natives have legally harvested Cook Inlet beluga whales prior to and after passage of the MMPA in 1972. The effect of past harvest practices on the Cook Inlet beluga whale is significant. While subsistence harvest occurred at unknown levels for decades, the observed decline from 1994 through 1998 and the reported harvest (including estimates of whales which were struck but lost, and assumed to have perished) indicated these harvest levels were unsustainable.

Annual subsistence take by Alaska Natives during 1995–1998 averaged 77 whales (Angliss and Lodge, 2002). The harvest, which was as high as 20 percent of the population in 1996, was sufficiently high to account for the 14 percent annual rate of decline in the population during 1994 through 1998 (Hobbs *et al.*, 2000). In 1999 there was no harvest as the result of a voluntary moratorium by the hunters and Public Law 106–31. Harvests have been greatly reduced since 1998, with only five whales taken between 1999 and 2006. However, the subsistence removals reported during the 1990s are sufficient to account for the declines observed in this population and must be considered as a factor in the proposed classification of the Cook Inlet beluga whale DPS as endangered.

Impacts of Stranding Events

Cook Inlet beluga whales are known to become stranded along the shorelines and mudflats of Cook Inlet. These stranding events are not uncommon. NMFS has reports of 804 stranded whales (some of which were involved in mass stranding events) in upper Cook Inlet since 1988 (Vos and Shelden, 2005). Mass stranding events occurred most frequently along Turnagain Arm, and often coincided with extreme tidal fluctuations ("spring tides") and/or killer whale sighting reports (Shelden *et al.*, 2003). Other mass strandings have been reported in the Susitna Delta (Vos and Shelden, 2005) and most recently on September 12, 2006, in Knik Arm (B. Mahoney, NMFS Alaska Region Office, unpublished data). Belugas are usually able to survive a stranding event and escape to deeper water on the rising tide. However, some deaths during these events do occur. For example, in one unusual case in August 2003, at least 46 belugas stranded in Turnagain Arm for over 10 hours, and of these, at least five whales are known to have died. In a more typical case, another 58 belugas stranded in two events in Turnagain Arm the following month with no identified mortalities (Vos and Shelden, 2005).

Catastrophic mortality (the deaths of a large number, such as 20 percent of the population) due to a mass stranding event or other events such as ice entrapment, oil spill, or volcanic activity was considered in simulations of the Cook Inlet beluga and assigned a probability of 5 percent per year for purposes of the status review (NMFS, 2006). Such mortality, if it occurred, could significantly impede recovery or force the population below a threshold to which it would not otherwise be vulnerable and from which it could not recover; however, such catastrophic mortality has not been reported in Cook Inlet. Although live mass strandings have occurred, between 1988 and 2000 only12 belugas were reported dead out of 650 belugas that stranded (Vos and Shelden, 2005). Mass stranding events are not believed to be a factor that has caused, or had a significant role in, the decline of the Cook Inlet beluga whale DPS.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect such species. Such efforts would include measures by Native American tribes and organizations and local governments, and may also include efforts by private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)) constitute conservation measures. On March 28, 2003, NMFS and USFWS published the final Policy for Evaluating Conservation Efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented or have been implemented but have not yet demonstrated effectiveness. The PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy of existing conservation efforts.

Cook Inlet beluga whales benefit from protections afforded by the MMPA. The Cook Inlet beluga whale was designated as a depleted stock under the MMPA in 2000, and a draft Conservation Plan was published (70 FR 12853; March 16, 2005). That conservation plan is comprehensive and provides recommendations to foster recovery. While some recommendations are funded, many recommendations are

unfunded. Therefore, it is uncertain whether these beluga conservation measures will be implemented. Federal law (Public Law 106–553) prohibits the taking of Cook Inlet beluga whales except through a cooperative agreement between NMFS and affected Alaska Native organizations. Presently, co-management agreements are signed annually with the Cook Inlet Marine Mammal Council to establish strike (harvest) limits and set forth requirements intended to minimize waste and prevent unintentional harassment. Harvest regulations are being considered to address the management of Cook Inlet beluga subsistence hunting. Once implemented, these regulations will constitute an effective conservation plan regarding Alaska Native subsistence harvest. They will not, however, be comprehensive in addressing the many other issues now confronting Cook Inlet belugas.

We are not aware of conservation efforts undertaken by foreign nations specifically to protect Cook Inlet beluga whales. We support all conservation efforts currently in effect; however, these efforts lack the certainty of implementation and effectiveness so as to have removed or reduced threats to Cook Inlet belugas. In developing our final listing determination, we will consider the best available information concerning these conservation efforts and any other protective efforts by states or local entities for which we have information (See description of PECE above).

Proposed Listing Determination

We have reviewed the extinction risk analysis for the Cook Inlet beluga whale, considered the factors in section 4(a)(1) of the ESA, and taken into account conservation efforts to protect the species. We conclude that the Cook Inlet beluga whale is in danger of extinction throughout all of its range because of: present or threatened destruction, modification or curtailment of habitat or range; the inadequacy of existing regulatory mechanisms (largely the past absence of regulations on subsistence harvests); disease and/or predation (further predation by killer whales can be shown to have a significant impact on survival); and other natural and manmade factors affecting its continued existence (effects of past subsistence removals). See the "Factors Affecting the Species" section above for a description of the specific risks associated with section 4(a)(1). This endangered determination is supported by the results of population modeling which indicate a probability of extinction (for what is considered the most realistic scenario) of 26 percent within the next 100 years.

We convened a workshop in February 2000 to develop ESA recovery criteria for large whales. That workshop concluded that a reasonable, conservative definition for endangered status would be a probability of extinction greater than or equal to 1 percent in 100 years. While that threshold may be conservative, the significantly greater extinction risk of 26 percent in 100 years modeled for the Cook Inlet beluga provides a strong justification for endangered status. Further, the factors confounding recovery have not been thoroughly identified and may continue to persist until more is known and corrective actions can be taken. We also conclude that, at present, no protective or conservation measures are in place that will substantially mitigate the factors affecting the future viability and recovery of the Cook Inlet beluga whale DPS.

Based on the best available scientific and commercial information, we propose that the Cook Inlet beluga whale be listed under the ESA as an endangered species.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify critical habitat. Under Section 7(a)(4), Federal agencies must confer with us on any of these activities to ensure that any such activity is not likely to jeopardize the continued existence of a species proposed for listing or destroy or adversely modify proposed critical habitat. Examples of Federal actions that may affect the Cook Inlet beluga whale include permits and authorizations relating to coastal development and habitat alteration, oil and gas development (including seismic exploration), toxic waste and other pollutant discharges, Federal fishery management plans, and cooperative agreements for subsistence harvest.

Sections 10(a)(1)(A) and (B) of the ESA authorize NMFS to grant exceptions to the ESA's Section 9 take prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. Activities potentially requiring a section 10(a)(1)(A) research/enhancement permit if Cook Inlet beluga whales are listed include scientific research that targets Cook Inlet beluga whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, provided that the requirements of section 10(a)(2) are met.

Critical Habitat

Section 3 of the ESA defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed....on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed...upon a determination by the Secretary that such areas are essential for the conservation of the species." Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms "conserve," "conserving," and "conservation" to mean "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary."

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that NMFS "consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or

physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species." The regulations further direct NMFS to "focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species," and specify that the "known primary constituent elements shall be listed with the critical habitat description." The regulations identify primary constituent elements (PCEs) as including, but not limited to: "roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types."

The ESA directs the Secretary of Commerce to consider the economic impact of designating critical habitat, and under section 4(b)(2) the Secretary may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. We are considering proposal of critical habitat for the Cook Inlet beluga whale in a separate rulemaking. To assist us with that rulemaking, we specifically request information on the economic attributes within the Cook Inlet region that could be impacted by critical habitat designation, as well as identification of the PCEs or "essential features" of this habitat and to what extent those features may require special management considerations or protection.

Public Comments Solicited

We request interested persons to submit comments, information, and suggestions concerning this proposed rule. We solicit comments or suggestions from the public, other concerned governments and agencies, Alaska Natives, the scientific community, industry, or any other interested party. Comments are particularly sought concerning:

(1) The current population status of the Cook Inlet beluga whale;

(2) Biological or other information regarding the threats to this species;

(3) Information on the effectiveness of ongoing and planned conservation efforts by states or local entities;

(4) Information related to the identification of critical habitat and essential physical or biological features for this species; and

(5) Economic or other relevant impacts of designation of critical habitat.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website at *http://www.fakr.noaa.gov/*. Comments and information received during the comment period on this proposed rule will be considered in the final decision whether to list the Cook Inlet beluga whale DPS as endangered and any future proposal to designate critical habitat.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing, if requested, within 45 days of publication of a proposed regulation to list a species under the ESA. Requests for public hearing must be made in writing (see **ADDRESSES**) by June 4, 2007. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

Recognizing the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, and in keeping with Department of Commerce policies, we request information from, and will coordinate development of, this proposed ESA listing with appropriate State resource agencies in Alaska.

E.O. 13175, Consultation and Coordination with Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 - Consultation and Coordination with Indian Tribal Governments - outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108- 447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

We will contact any tribal governments or Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer the opportunity to comment on the proposed rule and discuss any concerns they may have.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Endangered and threatened species.

Dated: April 16, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 224, title 50 of the Code of Federal Regulations as set forth below:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation of part 224 continues to read as follows:

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

§ 224.101 [Amended]

2. In § 224.101, amend paragraph (b) by adding, "Cook Inlet distinct population segment of beluga whale (*Delphinapterus leucas*)" in alphabetical order.

[FR Doc. E7–7577 Filed 4–19–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070227047–7047–01; I.D. 020405C]

RIN 0648–AS96

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 14; Essential Fish Habitat Descriptions for Pacific Salmon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 14 to the Pacific Salmon Fishery Management Plan (Salmon FMP) to identify and describe essential fish habitat (EFH) for Pacific salmon. The intent of this proposed rule is to codify the EFH identifications and descriptions for freshwater and marine habitats of Pacific salmon managed under the Salmon FMP, including Chinook, coho, and pink salmon. This proposed rule complies with an order issued by the U.S. District Court of Idaho directing NMFS to codify the EFH identifications and descriptions contained in the Salmon FMP. This proposed EFH rule is separate and distinct from the December 2004 proposed critical habitat rules in which NMFS proposed critical habitat for seven groupings of Chinook and coho salmon listed as threatened or endangered species under the Endangered Species Act (ESA). Where EFH and critical habitat overlap, NMFS will generally merge the results of both consultations into one response package to maximize regulatory efficiencies whenever possible.

DATES: Comments must be received by July 19, 2007.

ADDRESSES: You may submit comments or obtain a supplemental regulatory impact review to amendment 14 to the Pacific Salmon Fishery Management Plan by any of the following methods:

- *E-mail: EFH.salmon@NOAA.gov.* Include in the subject line the following identifier "RIN 0648–AS96."
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* For submitting paper, disk or CD ROM comments. Frank Lockhart, NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115.
- *Fax:* 206–526–6736.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6142.

SUPPLEMENTARY INFORMATION: Among other things, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes development of Federal Fishery Management Plans (FMPs), and Federal regulation of domestic fisheries under those FMPs, within the 200–mile U.S. Exclusive Economic Zone (EEZ). 16 U.S.C. 1811, 1853. To assist the Secretary of Commerce (Secretary) in carrying out specific management and conservation duties, the Magnuson-Stevens Act created eight regional fishery management councils. Under the Magnuson-Stevens Act, an FMP and any amendments are usually originated by one of the eight regional fishery management councils, 16 U.S.C. 1852, and must then be approved by the Secretary of Commerce. 16 U.S.C. 1854.

Essential Fish Habitat

The Magnuson-Stevens Act, originally enacted in 1976, has been amended several times. In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act adding provisions aimed at halting overfishing and rebuilding overfished fisheries, reducing bycatch, and assessing and minimizing the impacts of management measures on fishing communities. Congress articulated in its findings that:

> one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States. 16 U.S.C. 1801(a).

In making such findings, Congress declared one of the purposes of the Magnuson-Stevens Act to be the promotion of "the protection of [EFH] in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat." 16 U.S.C. 1802(b)(7). To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended Magnuson-Stevens Act required each existing, and any new, FMP to:

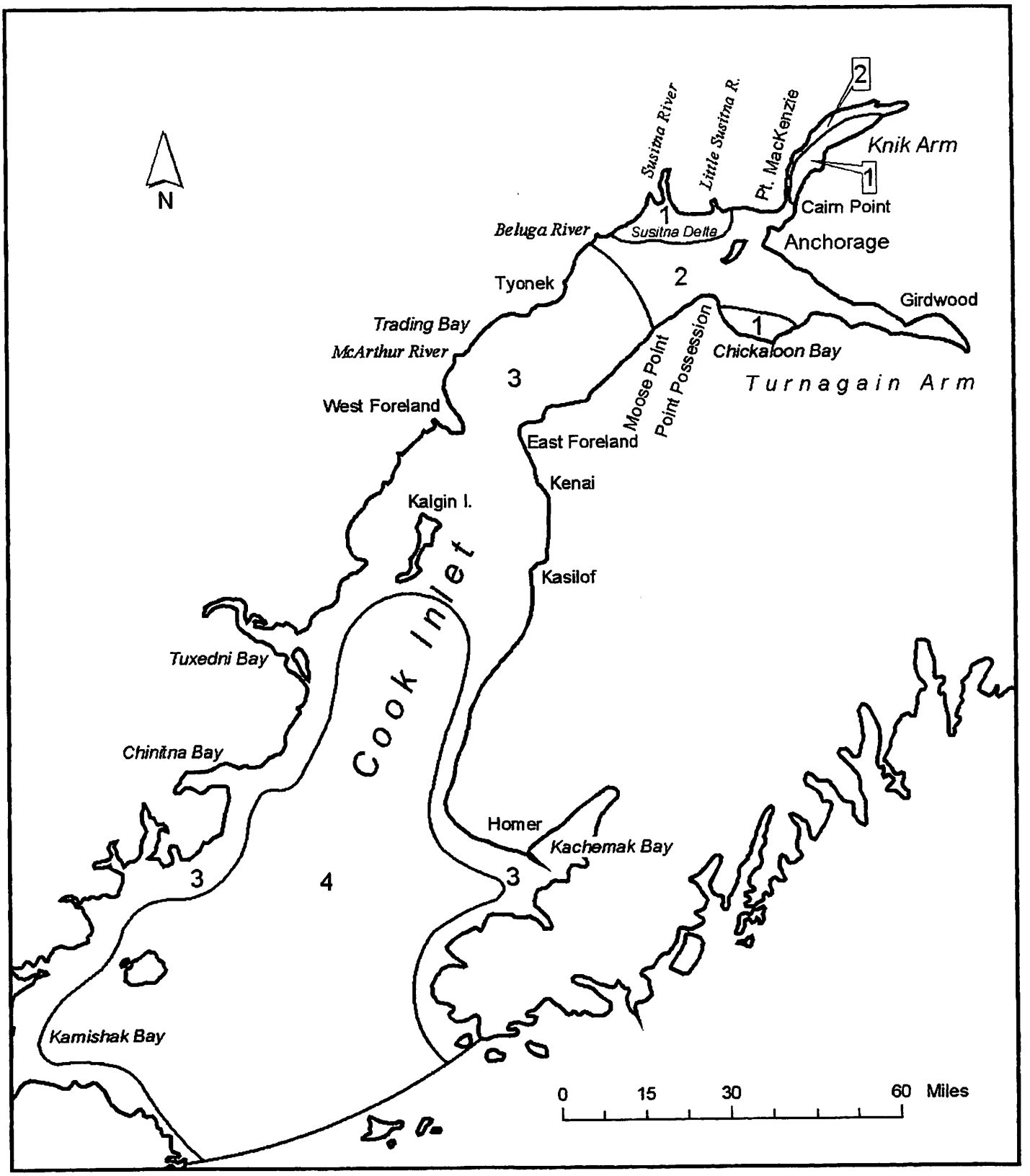
> describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. 16 U.S.C. 1853(a)(7).

"EFH" is defined in the Magnuson-Stevens Act as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." 16 U.S.C. 1802(10).

The EFH regulations (50 CFR 600.815) establish additional guidance to the Councils on how to identify and describe EFH. The regulations indicate that Councils should:

> obtain information to describe and identify EFH from the best available sources, including peer reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information.

The regulations identify four classification levels to organize available information relevant to EFH identifications and descriptions. Level 1 information is limited to species distributional data; level 2 information includes habitat-related densities; level 3 includes growth, reproduction or survival rates within habitats; and level 4 consists of production rates by habitat. Councils are encouraged to identify and describe EFH based on the highest level of detail (i.e., level 4). Readers are encouraged to see the EFH regulations (50 CFR 600.815, subpart J) for a complete description of each of these levels as well as guidance on how the Councils should analyze the available information. In determinating EFH, the regulations advise the Councils to interpret the available information in a "risk-averse fashion to ensure adequate areas are identified as EFH for managed species." 50 CFR 600.815(a)(1)(iv)(A). For Pacific salmon, the Pacific Fishery Management Council (Pacific Council) obtained information at all four levels



Cook Inlet beluga whale habitat zones (from draft Conservation Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*), National Marine Fisheries Service, March 2005). Zones: 1 = high value/high sensitivity habitat; 2 = high value habitat; 3 = winter habitat, secondary summer habitat, historic sites; 4 = remainder of known range.

SOUTHWEST ALASKA SEA OTTER RECOVERY TEAM, MEETING THREE

DRAFT MEETING AGENDA
for 10-11 April 2007 at the
North Pacific Research Board Conference Room
1007 West 3rd Avenue, Suite 100
Anchorage, Alaska 99501

10 April, Tuesday

9:00 am I. Welcome and opening statements

II. Introductions

III. Review and approval of agenda

9:30 am IV. Update on SWAK SO management actions
- A. ESA 4(d) special rule
- B. Critical habitat (SWAKSORT white paper?)
- C. RD response to RT letter of 12/6/06

10:00 am V. Update on Fiscal Year 2007
- A. Budget outlook
- B. Planned studies relating to SW DPS
  - a. USFWS (include UME)
  - b. USGS
  - c. Alaska SeaLife Center
  - d. TASSC (may be done on the next day when Liana Jack will attend)
  - e. Others?

11:00 am VII. Review of progress on Recovery Plan Background and Threats sections (status of revisions to sections and further actions needed)
- A. Biological background (lead Bodkin)
- B. Abundance and trends (lead Burn)
- C. Infectious diseases (lead Burek)
- D. Biotoxins (lead Burek)
- E. Contaminants (lead Burek)
- F. Food limitation (lead Tinker)
- G. Disturbance (lead Barrett-Lennard)
- H. Entanglement (lead Wynne)
- I. Subsistence harvest (lead Burn)
- J. Predation (leads Tinker/Barrett-Lennard)
- K. Habitat concerns (lead Pitcher)
- L. Illegal take (lead Burn)

12:15 pm LUNCH

1:30 pm VII. Review of progress on Recovery Plan Background and Threats sections, continued

3:30 pm VIII. Discussion of draft Recovery Strategy

5:00 pm ADJOURN

SOUTHWEST ALASKA SEA OTTER RECOVERY TEAM, MEETING THREE
DRAFT AGENDA, CONTINUED

11 April, Wednesday

8:30 am	IX.	Report on TASSC sea otter research (skiff surveys, etc.)
9:00 am	X.	Discussion of Recovery Goals and Criteria A. PVA-based B. Non-PVA based
12:00 am		LUNCH BREAK
1:00 pm	XI.	Recovery Action Outline A. Discuss and agree upon items B. Assignments to draft text
3:00 pm	XII.	Methods for developing remaining sections of the recovery plan A. Threats analysis B. Implementation schedule
4:30 pm	XIII.	Schedule for future meetings
5:00 pm		ADJOURN

Southwest Alaska Sea Otter Recovery Team (SWAKSORT)
Team Membership

Lloyd Lowry (Team Leader)
University of Alaska Fairbanks

Douglas Burn (Agency Lead)
U.S. Fish and Wildlife Service

Team Members

Dr. Lance Barrett-Lennard
University of British Columbia

David Benton
Marine Conservation Alliance

James Bodkin
U.S. Geological Survey

Dr. Kathleen Burek
Alaska Veterinary Pathology Services

Jim Curland
Defenders of Wildlife

Dr. Douglas DeMaster
National Marine Fisheries Service

Dr. James Estes
U.S. Geological Survey and The Alaska SeaLife Center

Dick Jacobsen
Sand Point, Alaska

Kenneth Pitcher
Alaska Department of Fish and Game

Dr. Katherine Ralls
Smithsonian National Zoological Park

Margaret Roberts
The Alaska Sea Otter and Steller Sea Lion Commission

Dr. Tim Tinker
University of California, Santa Cruz

Kate Wynne
University of Alaska Sea Grant Program

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY, Plaintiff, v. DIRK KEMPTHORNE, Secretary of the United States Department of the Interior, and the UNITED STATES FISH &	No. 1:06-cv-02151-RMC STIPULATED SETTLEMENT AGREEMENT AND ORDER

WILDLIFE SERVICE,

Defendants.

Plaintiff, Center for Biological Diversity ("CBD"), and Defendants, Dirk Kempthorne, Secretary of the United States Department of the Interior ("Secretary"), and the U.S. Fish and Wildlife Service ("Service"), by and through their undersigned counsel, state as follows:

WHEREAS, on August 9, 2005, the Service listed the southwest Alaska distinct population segment ("DPS") of the northern sea otter, *Enhydra lutris kenyoni*, as threatened under the Endangered Species Act;

WHEREAS, on December 19, 2006, CBD filed a complaint for declaratory and injunctive relief, challenging the Secretary's failure to designate critical habitat for the southwest Alaska DPS of the northern sea otter after finding such designation "not determinable" pursuant to 16 U.S.C. § 1533(b)(6)(C)(ii);

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to CBD's claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in CBD's complaint;

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. On or before November 30, 2008, the Service shall submit to the *Federal Register* a determination as to whether designation of critical habitat for the southwest Alaska DPS of the northern sea otter is prudent pursuant to 16 U.S.C. § 1533(b)(6)(C)(ii). If the Service finds that the

designation is prudent, the Service will submit a proposed critical habitat rule pursuant to 16 U.S.C. § 1533(b)(5) to the *Federal Register* by November 30, 2008. If the Service proposes critical habitat on November 30, 2008, the Service will submit a final critical habitat determination pursuant to 16 U.S.C. § 1533(a)(3) and 16 U.S.C. § 1533(b)(2) to the *Federal Register* by October 1, 2009.

2. Either party may seek to modify the deadline for any actions specified in Paragraph 1 for good cause shown, consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the parties shall use the dispute resolution procedures specified in Paragraph 3.

3. The Order entering this Settlement Agreement ("Agreement") may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadline for the actions specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute or seeking enforcement, shall provide the other party with written notice of the claim. The parties agree that they will meet and confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim within thirty days after the notice, either party may pursue relief from the Court.

4. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable time line for designation of critical habitat under 16 U.S.C. § 1533 in any other proceeding regarding the Service's implementation of the ESA.

5. Plaintiff intends to seek from Defendants reimbursement of attorneys' fees and costs incurred in this litigation. Defendants agree that Plaintiff is entitled to an award of costs of litigation pursuant to ESA Section 11, which provides: "The court, in issuing any final order in any suit

brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate." 16 U.S.C. § 1540(g)(4). The parties agree to attempt to resolve Plaintiff's claims for fees and costs expeditiously and without the need for Court intervention. The Court shall retain jurisdiction over the case for the purpose of resolving any dispute between the parties regarding Plaintiff's claims for an award of fees and costs. If the parties are unable to resolve attorneys' fees and costs among themselves, Plaintiff shall file any motion seeking such award within 90 days of the order adopting this Stipulated Settlement Agreement. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiff, including the hourly rate, in any continuation of the present action or any future litigation.

6. Subject to the qualifications in Paragraph 7, no provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the Endangered Species Act, the Administrative Procedure Act, or any other law or regulation, either substantive or procedural. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

7. Plaintiff recognizes that Defendants assert that no provision of this Agreement shall be interpreted as or constitute a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation. Defendants recognize that Plaintiff asserts that (a) this Agreement and its terms do not create a conflict with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), because the duty and deadlines to designate critical habitat are required in non-discretionary terms by the ESA; and (b) the Anti-Deficiency Act would not excuse compliance with a pre-existing, court-approved Agreement. Plaintiff intends to assert this position if Defendants fail to comply with the terms of this Agreement for reasons of insufficient appropriations. Defendants reserve all legal and equitable defenses to such a claim.

8. The parties agree that this Settlement Agreement ("Agreement") was negotiated in good faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by the parties. By entering into this Agreement the parties do not waive any claim or defense.

9. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

10. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying the Agreement.

11. Upon approval of this Agreement by the Court, all counts of Plaintiff's Complaint shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1).

12. Notwithstanding the dismissal of this action, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994).

Dated: April 9, 2007

Respectfully submitted,

/s/ William J. Snape, III
WILLIAM J. SNAPE, III

/s/ Miyoko Sakashita
MIYOKO SAKASHITA
Center for Biological Diversity

Attorneys for Plaintiff

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Acting Assistant Attorney General
JEAN E. WILLIAMS, Section Chief
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/s/ Lawson E. Fite
LAWSON E. FITE, Trial Attorney
U.S. Department of Justice
Wildlife & Marine Resources Section
Environment & Natural Resources Division

Attorneys for Defendants

ORDER

The terms and conditions of this Stipulated Settlement Agreement are hereby adopted as an enforceable ORDER of this Court, and this matter is hereby DISMISSED with prejudice.

Dated: this _____ day of _____ 2007.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, Plaintiff, v. DIRK KEMPTHORNE, et al., Defendants.	No. 1:06-cv-02151-RMC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Stipulated Settlement Agreement and Proposed Order was served on this 9th day of April, 2007, via the CM/ECF system, on all counsel of record.

/s/ Lawson E. Fite
LAWSON E. FITE

Thank you

A special thank you to all those who attended the Fisheries Depredation Symposium at Poets Cove on Pender Island. By all accounts it was a very successful meeting. We sincerely appreciate the willingness with which participants shared their experiences and perspective on this challenging issue.

Warm Regards,

Lance Barrett-Lennard, on behalf of the Program and Organizing Committees

Principal Findings and Advice

Below is a quick summary of the key findings of the meeting:

1) The problem of depredation (the raiding of fishing gear) by killer whales and sperm whales is growing around the world. This increase likely reflects a) diminishing natural food supplies for these species, and b) the transmission of depredation behaviours between whales by social learning. Hook and line fisheries are most affected, whereas depredation of net fisheries by these species is very rare.

2) Depredation is much easier to prevent or control before it becomes an entrenched behaviour. It is very difficult to control the behaviour of whales that have become dependent on depredation.

3) Depredation by killer and sperm whales is not widespread in BC yet, but appears to be increasing and could become a serious problem in several years. At present, the fishers most affected are commercial salmon trollers and sport fishers targeting chinook and coho salmon.

4) Depredation is a severe problem in Alaska. In the Alaskan panhandle, sperm whales depredating the valuable sablefish (black cod) fishery are the main problem. Along the NW coast of Alaska and the Aleutian Island chain, the main problem is killer whales that raid sablefish and halibut fishers. In the southern ocean, the lucrative toothfish (Chilean sea bass) fishery is seriously affected, whereas in the tropics, various species of tuna are taken.

5) The principle problem posed by depredating whales to fishers is the loss of catch. Gear damage is relatively minor and rare, and the whales do no appear to pose a danger to fishers.

6) As well as causing serious problems to fishermen, depredation harms whale populations in at least two ways. First, efforts to deter depredating whales can cause injury. Second, dependence on depredation can cause whales to lose natural behaviours, harming their populations in the long run.

7) Various research projects are being initiated to look for ways to reduce or prevent depredation. Most promising among these are acoustic devices and modifications to fishing gear, particularly the conversion of hook and line gear to pots and traps. Research will be conducted collaboratively with both fishers and researchers.

8) Because no "quick fix" solution exists at present, the best immediate advice for fishermen is a strict "do not reward" policy. Long-line fishers should drop their gear and troll fishers should remove theirs from the water when whales approach; both should only resume fishing when whales have left the area.

Background

Fisheries depredation (removal of fish from fishing gear) by toothed whales is a widespread problem in many oceans of the world. The negative impacts of depredation include economic losses to fishermen, increased pressure on fish stocks, and injury or mortality of whales caused by deterrent methods, entanglement, or accidental hooking. Because it provides an additional food supply, depredation also has the potential to cause whale populations to increase beyond their natural carrying capacity, and/or for previously-existing behaviours related to hunting or seasonal movements to be lost.

In 2002, a workshop in Samoa produced a report entitled Interactions between Cetaceans and Longline Fisheries, which focuses on the South Pacific and contains background papers on specific fisheries affected by depredation. The report provides general recommendations regarding possible methods for reducing depredation, improving data collection, identifying whale species involved in depredation, and increasing the awareness of depredation among governmental and non-governmental agencies.

Symposium Objectives The 2006 symposium focused on depredation by killer and sperm whales, and built on progress made in Samoa. Its objectives were:

A) to broaden understanding of :

· cues and behaviours whales use to locate gear and remove fish · variability of depredation behaviours within and between species · spread of depredation between groups of whales · extent of losses resulting from depredation · implications of depredation for fisheries management

B) to produce specific guidelines for the fishing industry and fisheries management agencies on:

· how fishing operations can be modified to reduce or eliminate depredation · preventing depredation from spreading to new or existing fisheries experiencing no depredation at this time

The first part of the symposium consisted of presentations focused on:

· aspects of natural behaviour and social organisation of killer and sperm whales, with emphasis on populations involved in depredation · case-history examples of killer and sperm whale depredation with special emphasis on the behaviour of the whales involved and associated changes in their social structure, ecology, or demography · impacts of depredation on the fishing industry · methods of passive deterrence, including modification of fishing behaviours, timing, and /or gear · methods of active deterrence · examples of successful measures used to reduce human conflict with species other than cetaceans

The second part of the meeting was comprised of in-depth, workshop-style group discussions focused on reducing the extent of the problem where it currently exists, limiting its spread to other fisheries and other regions, and producing guidelines for fishermen and fisheries managers affected by killer and sperm whale depredation.

Outcome Participants have been asked to contribute to a symposium report document, which is in progress, and which will summarize versions of the presentations, reports of the workshop discussion groups, and which will contain a set of specific guidelines for fishermen, fisheries managers, and policy makers. This proceedings document will be available on this web site as soon as it is complete. The web site is also being updated to include examples of data collection protocols and forms in order to more systematically quantify the effects of depredation.

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule proposing to approve the redesignation of the Harrisburg Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 25, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–10585 Filed 5–31–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[I.D. 021607C]

Endangered and Threatened Species: Extension of Public Comment Period and Notice of Public Hearings on Proposed Endangered Species Act Listing of Cook Inlet Beluga Whales

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

ACTION: Extension of public comment period; notice of public hearings.

SUMMARY: On April 20, 2007, NMFS proposed the listing of the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended. As part of that proposal, NMFS announced a public comment period to end on June 19, 2007. NMFS has received requests for an extension to the comment period and for public hearings on this issue. In response to these requests, NMFS is extending the public comment period for the proposed listing action to August 3, 2007. Additionally, NMFS is announcing that hearings will be held at two locations in Alaska to provide additional opportunities and formats to receive public input.

DATES: The deadline for comments on the April 20, 2007 (72 FR 19854) proposed rule is extended from June 19, 2007, to August 3, 2007.

ADDRESSES: We will hold two public hearings on this issue: one in Homer and one in Anchorage. The dates for these hearings will be announced in a forthcoming notice in the Federal Register.

Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: *CIB-ESA-Endangered@noaa.gov*. Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Mail: P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7557.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2007, NMFS published a proposed rule (72 FR 19854) to list the Cook Inlet beluga whale as an endangered species. This action followed completion of a status review of the Cook Inlet beluga whale which found this population to be at risk of extinction within the next 100 years. The April 20, 2007, proposed rule also describes NMFS' determination that this population constitutes a "species", or distinct population segment, under the ESA.

Extension of Public Comment Period

Several requests have been received to extend the comment period for the proposed listing. The comment period for the proposed listing was to end on June 19, 2007. NMFS is extending the comment period until August 3, 2007, to allow for adequate opportunity for public comment and participation in

public hearings (see **DATES** and **ADDRESSES**).

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In past ESA rule-making NMFS has conducted traditional public hearings, consisting of recorded oral testimony from interested individuals. This format, although providing a means of public input, does not provide opportunities for dialogue and information exchange. NMFS believes that the traditional public hearing format can be improved upon by also including a brief presentation on the results of the Status Review and what may be considered topics of interest.

The preferred means of providing public comment for the official record is via written testimony prepared in advance of the meeting which may also be presented orally. Blank "comment sheets" will be provided at the meetings for those without prepared written comments, and opportunity will also be provided for additional oral testimony. There is no need to register for these hearings.

In scheduling these public hearings, NMFS has anticipated that many affected stakeholders and members of the public may prefer to discuss the proposed listing directly with staff during the public comment period. These public meetings are not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposal (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on August 3, 2007.

References

The proposed rule, status review report, maps, a list of the references cited in this document, and other materials relating to the proposed listing can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

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

Dated: May 25, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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