

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *CO*
Executive Director
DATE: May 28, 2010
SUBJECT: Protected Resources Report

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| ESTIMATED TIME 1 HOUR |
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ACTION REQUIRED

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

BACKGROUND

A. Cook Inlet Beluga Whales

The Council has previously indicated a desire to be kept informed of the status of the Cook Inlet beluga whale. While Council-managed fisheries likely do not overlap the known or inferred distribution of this DPS of beluga whale, the status of this DPS is of continuing interest to many. Listed as endangered on October 22, 2008, NMFS is now in the process of developing a recovery plan for this DPS. At the April 2010 meeting, the Council asked several questions about the purpose and scope of the recovery plan, and whether it would include restrictions on commercial fisheries that occur in Cook Inlet. While the primary purpose of a recovery plan is to provide specific, measurable criteria for downlisting and delisting the species, it may also include management measures to promote recovery of the species.

An outline of the recovery plan was prepared by NMFS and is attached as Item B-7(a). In addition, a list of recovery team members and their respective affiliations is attached as Item B-7(b). The recovery team consists of a scientific panel and a stakeholder panel, and held its initial meeting from March 30-April 1, 2010 in Anchorage. The process of developing a draft recovery plan is anticipated to take 18 months. Additional background documents on the development of the Cook Inlet beluga recovery plan, including minutes from the first recovery plan team meeting, may be found at the NMFS Alaska region protected resource website:

<http://www.fakr.noaa.gov/protectedresources/whales/beluga/recovery/ci.htm>

B. Sea Otter Critical Habitat Designation

On October 8, 2009, the U.S. Fish & Wildlife Service (USFWS) issued the final rule on the agency's proposal to designate critical habitat for the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter under the Endangered Species Act (see Items B-7(c) and B-7(d)). Due to the timing of this announcement after the October 2009 Council meeting, the Council did not receive an update on this decision.

The proposed rule was published in December 2008, and the final designation was essentially unchanged from what was originally proposed. The Council submitted comments on the agency's proposal, noting that fisheries managed by the Council do not overlap to any appreciable extent with the Agency's proposed designated critical habitat. Thus, the Council did not express particular concern over the proposed designation of critical habitat for this sea otter DPS in Alaska, and concurred with the USFWS that a narrow definition of critical habitat is appropriate. Additional information on the northern sea otter DPS listing and proposed critical habitat designation, and detailed maps showing the area designated as critical habitat, may be found at: <http://alaska.fws.gov/fisheries/mmm/seaotters/criticalhabitat.htm>.

No restrictions on federal or state-managed fisheries within the areas designated as critical habitat are anticipated. The USFWS worked with ADFG staff to conduct a detailed analysis of fishery-related activities in the designated area, and there is little overlap between the commercial fisheries and prey species used by sea otters. In addition, the nearshore areas designated as critical habitat are not areas where significant commercial fishing occurs.

C. North Pacific Right Whale

North Pacific right whales were once abundant in the Bering Sea, but only an estimated 30 whales have been sighted in surveys in the Eastern Bering Sea in recent years. Studies conducted in 2008 and 2009 investigated the distribution and habitat use of right whales in the southeastern Bering Sea, where the majority of recent sightings have occurred (see Item B-7(e)). In addition to conducting transect surveys to count the number of individual whales, researchers implanted 3 satellite transmitters in right whales in 2009, and one transmitter in 2008. Individual whales were monitored for an average of 40 days, and all remained in the area of the southeastern Bering Sea that was designated in 2006 as right whale critical habitat.

In August 2010, whale scientists from the National Marine Mammal Laboratory will make a 25-day research cruise to survey and tag additional right whales in the southeastern Bering Sea. Researchers hope to collect data on locations and possible movements out of the southeastern Bering Sea after October. In 2008 and 2009, all satellite transmission data were collected from July through October, when animals were present in the southeastern Bering Sea.

D. Steller Sea Lion BiOp

At this meeting, the Council will receive an update from NMFS on the schedule for preparation and release of the draft *status quo* Biological Opinion on Steller sea lions. NMFS has indicated that it is the agency's intent to release the draft BiOp by mid to late July 2010. In order to provide the Council the opportunity to review the BiOp, and potentially provide input to the agency on necessary management measures for the 2011 fishing year, the Council will need to hold a special meeting in August. There will be no time for independent review by the Center for Independent Experts (CIE) as originally envisioned, but the Council could still request SSC review of the BiOp and use the August meeting to comment on the BiOp itself, as well as potentially provide input to NMFS on necessary management measures. The August meeting has been scheduled for the week of August 16-20 at the Captain Cook Hotel in Anchorage, with the SSC meeting August 16-17, the AP meeting August 17-18, and the Council meeting August 18-19.

Following the August meeting, NMFS would complete an analysis of alternative management measures, and those would be available for potential Council final action at the October meeting. This is a very compressed schedule but would allow for measures to be in place for the 2011 fishing year. Given the extremely compressed schedule, it is unclear at this point whether there is merit in attempting to engage the Council's SSL Mitigation Committee in this process. That question will continue to be explored, and will be discussed along with all of these issues at the June Council meeting.

2010 SSL Surveys

In June 2010, the National Marine Mammal Laboratory will conduct a survey of Steller sea lion non-pups across the range of the eastern and western stocks in Alaska. NMML will provide a report on the results of this survey at the December 2010 Council meeting. The last range-wide non-pup surveys were conducted in 2008. In 2009, pup surveys were conducted at all rookeries except those in the W Aleutians and Pribilofs. NMFS was able to use high-resolution photographs taken in 2008 to estimate pup production at all but two of the sites not surveyed in 2009.

RECOVERY OUTLINE
for
Cook Inlet Beluga Whales
(Delphinapterus leucas)

February 2010



Cook Inlet beluga whale mother and calf in Eagle Bay
photo credit: Christopher Garner, U.S. Army, Fort Richardson, Alaska, 2007

DISCLAIMER: *This outline, in concert with the Conservation Plan for Cook Inlet Beluga Whales (Delphinapterus leucas), is meant to serve as an interim guidance document to direct recovery efforts, including recovery planning, for the recently listed Cook Inlet beluga whale until a full recovery plan is developed and approved. A preliminary strategy for recovery of the species is presented here, as are recommended high priority actions to stabilize and recover the species. The recovery outline is intended primarily for internal use by the National Marine Fisheries Service as a pre-planning document. Formal public participation will be invited upon the release of the draft recovery plan for this species. However, any new information or comments that members of the public may wish to offer as a result of this recovery outline will be taken into consideration during the recovery planning process. Recovery planning is scheduled to begin in February 2010, and the recovery plan is targeted for completion in March 2013. NMFS invites public participation in the planning process. Interested parties may contact Mandy Migura at mandy.migura@noaa.gov or 907-271-1332.*

Recovery Outline for Cook Inlet Beluga Whales

February 2010

I. INTRODUCTION

This document, along with the Conservation Plan for Cook Inlet Beluga Whales (Conservation Plan) released in October 2008, lays out a preliminary course of action for recovery of the Cook Inlet beluga whales. Together, these two documents will serve to guide recovery efforts and inform consultation and permitting activities until a comprehensive recovery plan for the species has been finalized and approved.

Listing and contact information:

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|-------------------------|---|
| Scientific Name: | <i>Delphinapterus leucas</i> |
| Common Name: | Cook Inlet beluga whale |
| Listing Classification: | Endangered |
| Listing Date: | October 22, 2008 (73 FR 62919) |
| Lead Agency/Region: | National Marine Fisheries Service, Alaska Region |
| Lead Field Office: | Anchorage Field Office |
| Contact Biologist: | Mandy Migura, 907-271-1332, mandy.migura@noaa.gov |

Monitoring and research have provided us with information to understand some basic life history, habitat associations, and threats to the Cook Inlet beluga whale population. The National Marine Fisheries Service (NMFS) has studied Cook Inlet beluga whales since 1993: conducted annual aerial abundance surveys beginning in 1993; analyzed contaminants; regulated subsistence harvest; tagged belugas (satellite and radio tags); and gathered life history data through strandings. Abundance surveys are used to assess the population's size, distribution, and trends. Satellite tags on belugas have provided data on whale movements and habitat use. To date, 18 belugas were tagged in Cook Inlet between 1999 and 2002. Necropsies and samples from subsistence harvested and stranded belugas provided data useful in life history assessments, contaminants, genetics, parasites, diet, and disease studies. Traditional ecological knowledge from Alaska Natives have also been useful in understanding belugas in Cook Inlet.

Although much has been done, scientific knowledge of Cook Inlet beluga whale biology and ecology is incomplete. Likewise, while a number of known and potential threats are identified in the Conservation Plan, the actual levels of impact of these threats have not been determined. NMFS recognizes that not enough is known about the effects of each specific threat, and as such, we do not definitively know the level of impact each threat has on Cook Inlet beluga whales. Even though threats are discussed individually in the Conservation Plan, Cook Inlet belugas may be affected by multiple threats at any given time, compounding the impacts of the threats. Unfortunately, without an understanding of how individual threats impact belugas, we cannot know the cumulative effects of all the threats on Cook Inlet belugas.

Research and management on Cook Inlet beluga whales is constrained by certain biological aspects of the whales that make studying them and implementing effective management efforts difficult. Examples of biological constraints for beluga whales include the fact that belugas are marine mammals that live entirely in the water, have long life spans with delayed reproductive maturity, and have very few individual markings making identification of specific individuals difficult. Furthermore, the waters of Cook Inlet are very turbid and ice fills much of upper Inlet

several months out of the year, hindering winter monitoring activities (it is very difficult to distinguish belugas from ice in these murky waters). Effective management depends on a reasonable understanding of belugas' interaction with human activities within the belugas' environment. Our incomplete understanding of Cook Inlet beluga whales increases our uncertainty and confounds efforts to implement appropriate management measures to positively affect beluga recovery.

II. RECOVERY STATUS ASSESSMENT

A. BIOLOGICAL ASSESSMENT

Alaskan waters are home to five beluga stocks distinguished by their respective summer range: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet. The degree of genetic differentiation between the Cook Inlet stock and the other four Alaska beluga stocks indicates that Cook Inlet stock is the most isolated. This suggests that the Alaska Peninsula has long been an effective physical barrier to genetic exchange.

Beluga whales are considered a *K*-selected species given their low reproductive potential, the considerable time devoted to caring for their young, and long lifespans. Life history data specifically for Cook Inlet belugas are lacking, however, such data have been extrapolated for the Cook Inlet stock using data from other beluga populations, captive belugas, and odontocetes in general (see Conservation Plan for details).

The Cook Inlet beluga stock 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 this decline because there is no available information on the number of beluga whales that existed in Cook Inlet prior to development of the southcentral Alaska sub-Region, nor prior to modern subsistence harvests by Alaska Natives. For management purposes, NMFS currently considers 1,300 beluga whales as a reasonable estimate of historical abundance and thus the carrying capacity (*K*) of the Cook Inlet beluga whales (see Conservation Plan for details). NMFS estimates that the Cook Inlet beluga population's maximum theoretical net productivity rate is between two and six percent (i.e., the population has the potential to increase between two and six percent per year). However, even though subsistence harvests from this stock have been restricted from zero to two whales a year since 1999, annual abundance surveys of Cook Inlet belugas document a continued decline in the population of 1.49% per year (1999-2009). The 2009 abundance estimate is 321 belugas in Cook Inlet.

During the 1970s, the summer distribution of Cook Inlet beluga whales included the upper, mid, and parts of lower Cook Inlet, in both coastal and offshore waters. Annual aerial abundance surveys by NMFS have shown that beluga whales are no longer regularly observed in the lower Inlet in summer, and are now concentrated mainly in the upper Inlet during summer. This shrinking summer distribution is likely a function of a reduced population with the remaining whales using the habitat that offers the most abundant prey, the most favorable feeding topography, the best calving areas, and the best protection from predation. The contraction of the summer range of this population northward into the upper Inlet makes the belugas far more vulnerable to catastrophic events with the potential to kill a significant portion of the population. The documented lack of growth and apparent availability of suitable, undeveloped habitat throughout Cook Inlet suggest that there are some unknown factors limiting their recovery.

B. THREATS ASSESSMENT

The threats facing Cook Inlet beluga whales were briefly described through the listing process, and are discussed in detail in the Conservation Plan. Since the publication of both documents in October 2008, no new threats have emerged that require detailed discussion here.

The most pressing threats faced by Cook Inlet belugas are 1) effects from past over-harvest for subsistence use; 2) predation by killer whales; 3) mass strandings; and 4) anthropogenic noise from coastal development in upper Cook Inlet.

Harvest of beluga whales in Cook Inlet in the mid-1990s at unsustainable levels has been identified as a major cause of the population decline during that time. In 1999, NMFS and Alaska Natives worked cooperatively on harvest restrictions which limited the harvest to no more than two whales per year, with a total of five whales taken between 1999 and 2008. However, the population has not recovered as anticipated. In October 2008, NMFS published long-term subsistence harvest regulations to regulate the harvests depending on the five-year abundance average of Cook Inlet beluga whales. Even though belugas are still recovering from the past impacts of over-harvest, we feel these harvest regulations adequately address this threat at this time.

There are two natural threats that are of great concern to the survival of Cook Inlet beluga whales. Predation by killer whales is a natural occurrence and is likely not something that can be regulated by NMFS. However, with a population that is not growing, increased mortality due to predation could greatly limit the recovery potential of this population. For instance, if killer whales annually kill four belugas, the impact of four deaths on the beluga population is much less for a population of 800 whales than for a population of 400 whales. Thus, NMFS is attempting to better understand the impacts of predation by killer whales on belugas.

A second natural phenomena threatening the recovery of Cook Inlet beluga whales is their propensity to mass strand. While the Conservation Plan discusses possible reasons for strandings (e.g., potentially to avoid killer whales), we may never fully understand the causes. Live mass strandings present a real concern to recovery given the high percentage of the population that may be involved. In 2003, NMFS recorded five mass stranding events in Turnagain Arm involving at least 115 whales. Had all the whales died, potentially over 32% of the population could have been lost. Unfortunately, at this time there is very little we can do to prevent future live strandings.

The most irreconcilable threat is the fact that Cook Inlet beluga whales are most frequently observed in the areas with the greatest coastal development. Physical habitat loss due to commercial development is only a minor concern because the majority of Cook Inlet remains undeveloped; however, there are concentrated areas of high development (e.g., Knik Arm). The greatest threat posed by development to belugas is the anthropogenic noise produced during construction and operation of industrial projects. Currently, NMFS can only address noise issues through IHA/LOAs under the MMPA, although acoustic guidelines are being developed by NMFS. While existing projects will not be removed or shut down, NMFS anticipates working with developers of future projects to reduce the impacts of such projects on belugas, most likely through ESA section 7 or 10 consultations and IHA/LOAs under the MMPA.

C. CONSERVATION ASSESSMENT

NMFS has already implemented several management measures in an effort to curb the decline of the Cook Inlet beluga stock. Cook Inlet belugas have had protection under the MMPA since 1972, but received further protection in 2000 when they were classified as "depleted" under the MMPA. As required by the MMPA, NMFS published a draft Conservation Plan for the Cook Inlet beluga whales in 2005, and the final plan published in October 2008. The final Conservation Plan will serve as the primary recovery document, along with this Recovery Outline, until a Recovery Plan for Cook Inlet beluga whales has been published. The final Conservation Plan discusses in detail the threats currently faced by Cook Inlet belugas and includes specific recommended conservation actions spanning through fiscal year 2013.

Since 1999, NMFS has been working closely with Alaska Natives to develop regulations for subsistence harvests; in 2004 NMFS published interim harvest regulations, and in 2008 NMFS published long-term harvest regulations. Other management measures include developing a stranding response plan and a law enforcement plan; cooperating with other agencies to develop oil spill contingency plans; and regularly reviewing proposed state and federal permits and actions that may affect Cook Inlet beluga whales. Under the MMPA, NMFS has been and will continue to review projects that may "take" belugas and issue IHAs or LOAs if appropriate; under Section 7 of the ESA, NMFS will work with other federal agencies whose projects may affect belugas to reduce impacts. NMFS will also coordinate on ESA Section 10 permits. However, NMFS will carefully consider these types of activities, as any incidental take resulting in mortality would likely have a detrimental effect on the recovery potential of Cook Inlet belugas (i.e., one additional mortality beyond what NMFS currently estimates in the population viability models would significantly increase the risk of extinction).

Non-federal habitat protections have also been implemented. The State of Alaska has designated numerous state refuges, state critical habitat areas, and state sanctuaries in the Cook Inlet area, including the Susitna Flats Refuge, Redoubt Bay Critical Habitat Area, Kachemak Bay Critical Habitat Area, and Fox River Flats Critical Habitat Area. Such areas have been classified by the State as being essential to the protection of fish and wildlife habitat, and these four named areas specifically identify the presence of beluga whales within their boundaries.

In terms of net benefits to the species, the conservation measures undertaken to date do not outweigh the continuing threats to the species. They do, however, provide a foundation for advancing recovery of the species by building on current efforts.

D. SUMMARY ASSESSMENT

Overall, the population of Cook Inlet beluga whales is declining at a rate of 1.49% annually (1999-2009). The belugas' historic population size and distribution have constricted from historic estimates. Belugas currently number only 321 individuals (2009 estimate) and primarily occupy the upper reaches of Cook Inlet.

The process of recovering the Cook Inlet beluga whales is likely to be difficult, as evidenced by their lack of growth despite implementation of several conservation and management measures, their slow reproductive rates and long lifespans, their physical and genetic isolation from other beluga stocks, and the pressing threats facing them.

In summary, recovery of Cook Inlet beluga whales will be a long and perhaps difficult process. There is still much information that we do not know and must ascertain prior to being successful stewards. Minimally, we need to better understand the life history of belugas, and ascertain the impacts of threats on belugas before we can hope to recover the species.

III. PRELIMINARY RECOVERY STRATEGY

A. RECOVERY PRIORITY NUMBER

The Cook Inlet beluga whale is assigned a recovery priority number of 3, based on a high degree of threat, its low-moderate recovery potential, and its high potential conflict with economic activities. The high degree of threat is linked to the high probability of extinction (26% within the next 100 years), and due to the fact that one additional mortality beyond what was modeled increases that probability. The low-moderate potential for recovery is based upon the long life span and slow reproductive growth, and the apparent lack of recovery as a result of previously implemented conservation efforts. The high potential conflict with economic activities relates to the fact that the belugas' summer range has constricted to the upper reaches of Cook Inlet, overlapping with the areas undergoing the highest levels of coastal development in Cook Inlet.

B. RECOVERY VISION STATEMENT

Although highly subject to change, full recovery of the Cook Inlet beluga whales is currently envisioned as follows: The Cook Inlet beluga whale population will have grown to an abundance of sufficient size so that whales will once again be found throughout the reaches of Cook Inlet on a regular basis. Threats to the population will have been reduced to the point that they are no longer impacting recovery and population viability models predict a high probability of survival 100 years into the future. Given that predation and stranding are natural occurrences, NMFS has little to no control in reducing those threats based upon our current knowledge. NMFS will, however, work towards reducing the effects of anthropogenic threats on the population so that this vision can be met.

C. INITIAL ACTION PLAN

The primary focus of the initial phase of recovery will be to fill in the data gaps and minimize the effects from anthropogenic activities on Cook Inlet beluga whales. These actions will be accomplished through immediate enactment of the conservation actions listed in Conservation Plan, which lays out a time frame and assigns a priority to each action. The knowledge gained from these actions will add to our understanding of the ecological requirements of the species and what is needed to fully protect its habitat.

NMFS will also use the MMPA IHA/LOA permitting and ESA Section 7 consultation processes to address minimization of anthropogenic threats. In order for NMFS to approve activities through MMPA/ESA permits and consultations, NMFS must first determine that the activity is compatible with the Conservation Plan and existing population viability analyses.

Concurrently, NMFS will continue to pursue the research plan through NMML, continue annual aerial abundance surveys, and will actively participate in the stranding program.

NMFS will also continue working with Alaska Natives on co-management issues, and will pursue increased outreach and educational efforts designed to engage and involve the public, as laid out in the Conservation Plan.

IV. PREPLANNING DECISIONS

A. PLANNING APPROACH

Although NMFS has been studying the Cook Inlet beluga whales since 1993, our scientific knowledge of Cook Inlet beluga whale biology and ecology is incomplete, especially in comparison to the depth of information we have on other cetacean stocks such as the Southern Resident killer whales, or even the St. Lawrence belugas. A recurring theme throughout the Conservation Plan is the incompleteness of our scientific data to adequately explain and address the recovery needs of the Cook Inlet belugas.

A Recovery Plan will be prepared for Cook Inlet beluga whales pursuant to section 4(f) of the ESA. NMFS Interim Endangered and Threatened Species Recovery Planning Guidance offers several methods by which the Recovery Plan can be written, primarily via NMFS biologists, independent contractors, or recovery teams. Given that the lack of scientific data is hindering our ability to effectively manage and recover this stock, NMFS has decided to rely heavily on scientists when developing the Recovery Plan. However, NMFS also recognizes that there is great political and public interest in the Cook Inlet beluga whales. For this reason, NMFS has decided that in addition to utilizing a scientific panel to draft a Recovery Plan, we will invite select individuals, companies, or organizations to be on a stakeholder panel and to participate in multiple aspects of the recovery planning process. Thus, the Recovery Team will be composed of two advisory groups which will aide NMFS in the development of the Recovery Plan: a Scientific Panel and a Stakeholder Panel. This structure will allow for a diversity of viewpoints and input from the Recovery Team.

The Scientific Panel will be composed of beluga experts, scientists, and co-management partners. The primary functions of the Scientific Panel will be to advise NMFS about the key scientific data gaps and to develop the draft Recovery Plan. The Stakeholder Panel will consist of invited individuals and/or representatives of organizations with identified interests in the recovery of Cook Inlet belugas, or those who may be affected by particular actions taken to recover belugas. The functions of the Stakeholder Panel are to provide additional information to NMFS and the Scientific Panel (via meetings with the NMFS Liaison and the Recovery Team Leader) for consideration when drafting the Recovery Plan, as well as providing feedback on interim drafts of the plan.

NMFS will appoint a Recovery Team Leader from the Scientific Panel whose general responsibilities will include coordinating with the NMFS Liaison and the Stakeholder Panel, planning and executing each meeting, assigning projects, ensuring that all members of the team are participating as instructed, and compiling the individual parts of the draft plan into a cohesive document. Ultimately, the Recovery Plan is a NMFS document and must receive approval by NMFS prior to publication; therefore, a NMFS Liaison will be present at each meeting and will be heavily involved in the process.

The Recovery Plan process is scheduled to allow the Stakeholder Panel to provide input and feedback throughout development of the plan, while ensuring the Scientific Panel is provided the time and opportunity to complete the draft plan within necessary time frames. This process must balance the need for communication and exchange of thought between these important groups. The proposed plan process, terms of reference, Recovery Team Leader and the NMFS Liaison

will work to ensure that the interests of the Stakeholder Panel are fairly represented and will work to resolve conflict. The Stakeholder Panel will also be afforded the opportunity to review and comment on the draft Recovery Plan prior to its release to the general public for review. All parties will be reminded the goal of the process is to produce a scientifically-based plan to foster recovery of the Cook Inlet beluga whales within a process of teamwork and communication.

It is important to have a Recovery Plan in place as soon as possible, especially considering the negative growth rate still experienced by the Cook Inlet beluga population (-1.49% / year from 1999-2009). We have allotted just over three years for the recovery planning process. However, given the use of the Conservation Plan as a template, we anticipate that a draft Recovery Plan will be ready for internal review in little more than a year and a half. Ideally, this length of commitment to the recovery planning process will not pose too much of a burden to any individual and will motivate the team members to be as productive as possible. The remaining time will allow for public and peer reviews of the draft plan and time for revisions to be incorporated.

Key Stakeholder Groups:

Alaska Natives who traditionally hunted belugas in Cook Inlet
Affected State and local governments surrounding Cook Inlet
Development/Industry in or near Cook Inlet
Commercial fishing in Cook Inlet
Conservation and private environmental organizations
U.S. Military

B. GENERAL PUBLIC INVOLVEMENT

We see value in involving members of the general public that are not on the Recovery Team. Advantage will be taken of all opportunities to interact with the general public in a productive and meaningful way. We will be soliciting relevant information regarding Cook Inlet beluga whales and their habitats from the general public before the recovery plan is drafted. The public will also be afforded an opportunity to review and comment on a draft of the recovery plan before the plan is finalized.

We will also encourage the members of the Stakeholder Panel to speak to their peers and constituents about topics for future meetings and to bring that information with them for discussion with the rest of the recovery team.

An additional tool for involving the general public may be use of a website to provide recovery planning information, progress reports and meeting schedules of the recovery team, and possibly allow for feedback from the public which may be passed to the Recovery Team if pertinent. The specifics of a website concept have not been finalized.

C. TENTATIVE RECOVERY PLAN PRODUCTION SCHEDULE

Internal review of draft: September 2011
Public review of draft: February 2012
Public comments due: April 2012
Final Plan published: March 2013

D. INFORMATION MANAGEMENT

General:

All information relevant to recovery of the Cook Inlet beluga whales will be housed in NMFS, Anchorage Field Office administrative files. Mandy Migura will be responsible for maintaining a full administrative record for the recovery planning and implementation process for the species. Copies of new study findings, survey results, records of meetings, comments received, etc., should be forwarded to her.

Reporting requirements:

Information needed for annual accomplishment reports, the Recovery Report to Congress, expenditures reports, and implementation tracking should be forwarded by all individuals and offices involved in the Cook Inlet beluga whale recovery effort to Mandy Migura. Copies of the completed reports will then be disseminated to all contributors.

Approved by: _____

FR

Robert D. Mecum, Acting Administrator, Alaska Region

Date: _____

2/9/10

Cook Inlet Beluga Whale Recovery Team Members

*Note: All participants on the Recovery Team are participating on a voluntary basis.
None of the team members are being paid for their participation.*

SCIENTIFIC PANEL

| <u>Name</u> | <u>Expertise</u> |
|----------------------------------|---|
| 1. Bob Small | general marine mammal expert |
| 2. Carrie Goertz | beluga disease/health/strandings |
| 3. Craig Matkin | beluga predators |
| 4. Greg O'Corry-Crowe | beluga genetics |
| 5. Manolo Castellote | beluga acoustics |
| 6. Mark Willette | Cook Inlet fisheries biology and management |
| 7. Peter Merryman | president, Native co-management partner |
| 8. Pierre Beland | beluga ecotoxicology |
| 9. Robert Michaud | general beluga expert |
| 10. Robert Suydam | general beluga expert |
| 11. Rod Hobbs | general beluga expert; population models/statistics |
| 12. Tamara McGuire (Team Leader) | general beluga expert |

STAKEHOLDER PANEL

| <u>Name</u> | <u>Organization</u> |
|-----------------------|---|
| 1. Andrew Niemiec | Knik Arm Bridge and Toll Authority |
| 2. Brett Jokela | Anchorage Water and Wastewater Utility |
| 3. Chris Garner | Department of Defense |
| 4. Christine Nelson | Matanuska-Susitna Borough |
| 5. Doug Vincent-Lang | State of Alaska, Alaska Department of Fish and Game |
| 6. George Vakalis | Anchorage Municipality |
| 7. Jason Brune | Resource Development Council |
| 8. Joel Blatchford | Alaska Native Marine Mammal Hunters Committee |
| 9. John Schoen | Audubon Society |
| 10. Karla Dutton | Defenders of Wildlife |
| 11. Marilyn Crockett | Alaska Oil and Gas Association |
| 12. Mayor David Carey | Kenai Peninsula Borough |
| 13. Nancy Lord | Cook Inletkeeper |
| 14. Page Herring | Northern District Set Netters Association of Cook Inlet |
| 15. Paul Shadura | Kenai Peninsula Fishermen's Association |
| 16. Roland Maw | United Cook Inlet Drift Association |
| 17. Steve Ribuffo | Port of Anchorage |
| 18. Willie Goodwin | Alaska Beluga Whale Committee |

NMFS LIAISON

Mandy Migura
Cook Inlet Beluga Whale Recovery Coordinator
NMFS, Anchorage Field Office



U.S. FISH AND WILDLIFE SERVICE
Region 7 - Alaska
1011 East Tudor Road
Anchorage, Alaska 99503
(907)786-3309 (TDD Available)

News

09-30

For Immediate Release:
October 8, 2009

Contact: Bruce Woods (907)-786-3695
Douglas Burn (907) 786-3807

Service Designates Critical Habitat for Threatened Population of Sea Otters

The U.S. Fish and Wildlife Service today announced the designation of critical habitat for the southwest Alaska Distinct Population Segment of the northern sea otter (*Enhydra lutris kenyoni*) under the Endangered Species Act of 1973, as amended. In December 2008, we proposed designating approximately 5,900 square miles of nearshore, marine waters as critical habitat for this threatened population of sea otters. An economic analysis indicated that designation of critical habitat would not result in a large economic impact to residents of southwest Alaska. After consideration of the economic analysis, public comments submitted in writing and at one public hearing, the final designation is essentially unchanged from what we originally proposed.

Critical habitat designation identifies geographic areas that contain the specific habitat elements essential for the conservation of the species. The designation has no influence on private land unless proposed activities there are federally permitted or funded. The physical and biological features believed to be essential to sea otter conservation are those that provide cover and shelter from marine predators, especially killer whales. These areas primarily consist of shallow (less than 20 meters deep), nearshore (within 100 meters of the mean tide line) waters.

Federal agencies that undertake, fund, or permit activities that may affect sea otters are required to consult with the Service to ensure such actions do not pose a risk to the population, or adversely modify or destroy designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands or limit public access to public or private lands and waters.

The Service does not anticipate that designation of critical habitat for the southwest Alaska DPS of the northern sea otter will result in any closure of commercial fishing in southwest Alaska. Sea otters eat primarily benthic (bottom-dwelling) invertebrates; for example, in the Aleutians their diet consists mostly of sea urchins, crabs, octopus, and some bottom fishes. Because of their dependence on benthic prey items, sea otters spend the vast majority of their time in shallow water, typically close to the shore, and this preference is reflected in those areas proposed for critical habitat designation. The Service recently worked with the Alaska Department of Fish and Game to analyze that agency's commercial fishing database. The results indicated that the species which otters most often prey upon are of little or no commercial interest. In addition, the areas proposed as critical habitat, as described above, are not areas where significant commercial fishing occurs.

Sea otters are members of the weasel family (*Mustelidae*) and live in the nearshore waters along the North Pacific Ocean. They are the smallest marine mammals, and are most closely related to river otters. Historically, sea otters occurred in near shore waters around the North Pacific rim from Hokkaido, Japan through the marine coastal areas of the Russian Far East and the Pacific coastal areas in the United States as far south as Baja California. The world-wide sea otter population was reduced to just a few hundred animals between 1742 and 1911, due to commercial harvest by the Russian and

Russian/American fur trades. Three populations of sea otters exist in Alaska today, of which only the southwest Alaska DPS is listed as threatened. The statewide population is believed to number around 70,000 animals.

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service. For more information on our work and the people who make it happen, visit www.fws.gov.

- FWS-



U.S. Fish & Wildlife Service

Sea Otter Critical Habitat *in Southwest Alaska*

On October 8, 2009, the U.S. Fish and Wildlife Service (Service) finalized designation of 15,164 km² (5,855 mi²) of critical habitat for the threatened northern sea otter in southwest Alaska. This designation is essentially the same areas we proposed on December 16, 2008 (73 FR 76454). The final rule and final economic analysis can be viewed at <http://alaska.fws.gov/fisheries/mmm/seaotters/criticalhabitat.htm>.

What is "critical habitat?"

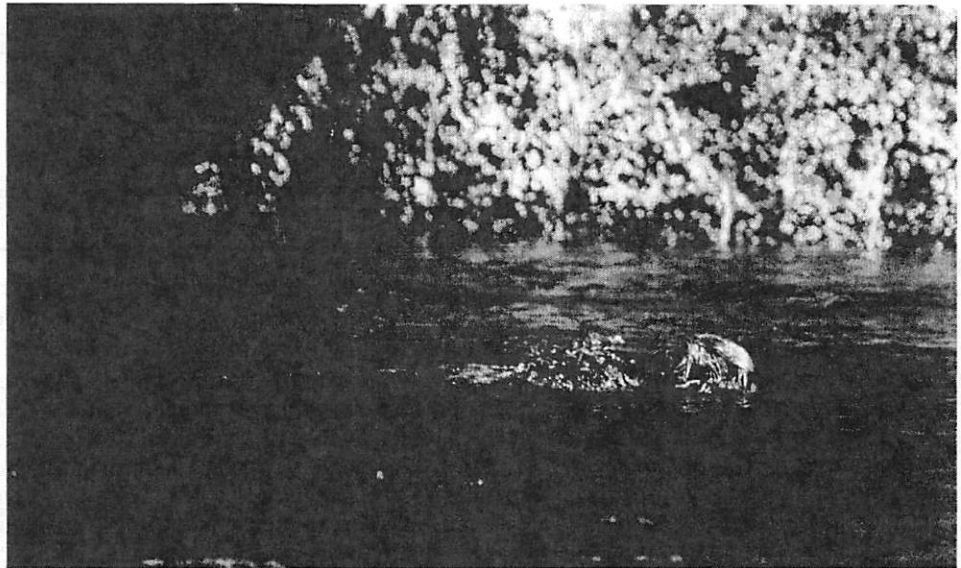
"Critical habitat" is a term in the Endangered Species Act (ESA) that identifies geographic areas that contain the specific habitat elements essential for the conservation of a threatened or endangered species, and which may require special management considerations or protection. Federal agencies that undertake, fund or permit activities that may affect critical habitat are required to consult with the Service to ensure such actions do not adversely modify or destroy designated critical habitat.

Where is the critical habitat located?

The southwest Alaska distinct population segment (DPS) of the northern sea otter range is from the end of the Aleutian Islands to lower western Cook Inlet, and includes the Kodiak Archipelago. The critical habitat is designated in five discrete units considered important to the recovery of the northern sea otter. From west to east, these are: (1) Western Aleutian Unit; (2) Eastern Aleutian Unit; (3) South Alaska Peninsula Unit; (4) Bristol Bay Unit, and (5) Kodiak, Kamishak, Alaska Peninsula Unit. Within these five discrete units, critical habitat occurs in nearshore marine waters ranging from the mean high tide line seaward for a distance of 100 meters, or to a water depth of 20 meters (see map).

How will designation of critical habitat impact human activities in southwest Alaska?

Now that critical habitat has been designated, federal agencies that undertake, fund or permit activities (a Federal nexus) that may affect critical



Sea otters are often found in shallow, nearshore marine waters.

habitat are required to consult with the Service to ensure such actions do not adversely modify or destroy critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands or limit public access to public or private lands and waters.

Activities with no Federal connection are not subject to these consultation requirements. For example, oil and gas development within critical habitat would, if federal permitting or federal funding were involved, require consultation with the U.S. Fish and Wildlife Service. However, if no Federal permits or funds were involved in such a project, consultation with the Service would not be required. Since August 2005, when sea otters were listed as threatened, consultations have not stopped any human activities in southwest Alaska.

Why is critical habitat being designated now?

Critical habitat for the southwest Alaska DPS of the northern sea otter was not determinable when it was originally listed in August 2005.

When the Service requested public comments on the proposed listing, we also requested information regarding features and specific areas that might have helped us designate critical habitat. The Service did not receive sufficient information at that time to designate critical habitat. When critical habitat is not determinable, the Service has 1 year from the time of listing to propose designation of critical habitat. That 1-year period has passed, and we are now required to designate critical habitat for this population of the northern sea otter.

Will the designation of critical habitat close commercial fishing in southwest Alaska, similar to what happened with Steller sea lions?

We do not expect that this designation of critical habitat for the southwest Alaska DPS of the northern sea otter will result in closure of commercial fishing in southwest Alaska. Although there is some overlap in the range of the Steller sea lion and the southwest Alaska DPS of the northern sea otter, the two species are very different. Steller sea lions eat fish, and they congregate in large numbers at specific sites known as haulouts and rookeries but feed in open waters.

Sea otters eat primarily benthic (bottom-dwelling) invertebrates; for example, in the Aleutians their diet consists mostly of sea urchins, crabs, octopus, and some bottom fishes. They require cover and shelter from marine predators, especially killer whales. The areas sea otters requires for food and cover are primarily shallow (less than 20 meters deep), nearshore (within 100 meters of the mean tide line) waters.

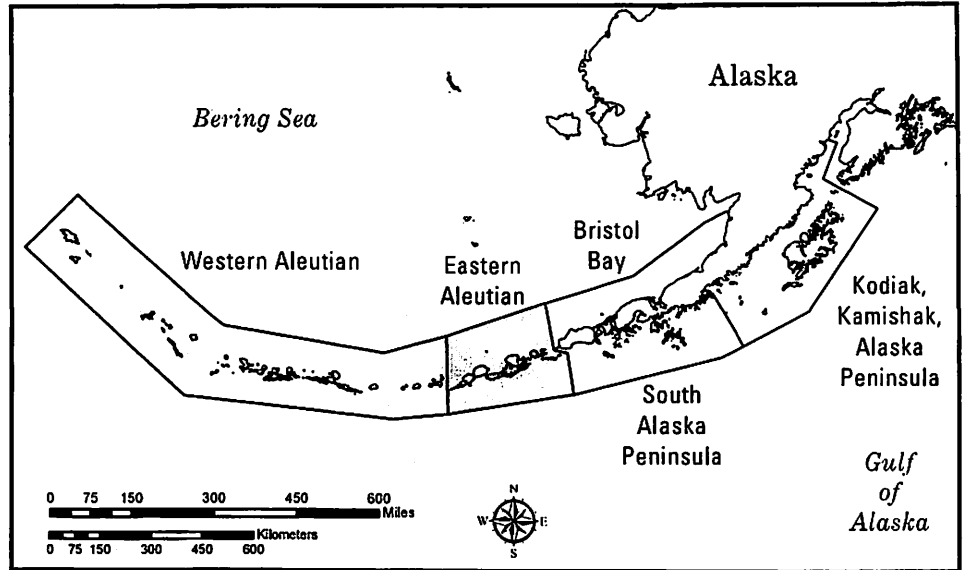
In addition, the area that we have designated as critical habitat for sea otters is only 4% of the area designated for Steller sea lions. Much of the designated sea otter critical habitat is contained within existing Steller sea lion critical habitat.

What are some of the theories about why the sea otter population has declined?

In the Aleutian Islands, where the bulk of research on the sea otter decline has occurred, there is no evidence that the decline has been caused by starvation, disease, or contaminants. The weight of evidence suggests that increased predation by killer whales (*Orcinus orca*) is the most likely cause of the decline. There is some disagreement within the scientific community regarding why killer whales may have increased their predation of sea otters, however.

Why would killer whales have started eating sea otters?

In a paper published in the October 16, 1998 issue of *Science*, researchers hypothesized that killer whales may have begun eating sea otters in response to declines in other prey items, specifically harbor seals and Steller sea lions. Declines in those species are believed to be due to changes in the composition and abundance of forage fish, possibly as a result of commercial fishing practices and environmental changes. The role of climate change in the sea otter decline is unknown.



Location of critical habitat units. Only areas that meet the definition of critical habitat within these units is actually designated as critical habitat.

If killer whales are the cause of the decline, how does this critical habitat designation address the problem?

Surveys over the past several years indicate that the majority of the sea otters that remain in the Aleutian Islands are found close to shore in shallow water or dense kelp beds. These areas may provide sea otters with protection from predators, such as killer whales. By protecting these areas from modification or destruction, we can ensure that the remaining sea otters have places where they can go to escape from predators.

Are sea otters hunted today?

Yes, to a limited extent. The Marine Mammal Protection Act of 1972 (MMPA) prohibits the "take" of marine mammals, which includes sea otters. Under the MMPA, take is defined as "hunt, harass, capture, or kill." The MMPA provides an exemption for Alaska Natives, who

are allowed to hunt marine mammals for subsistence purposes and to create and sell authentic articles of handicraft and clothing made from marine mammal parts. The ESA also includes a provision that would allow Alaska Native residents of coastal villages to conduct subsistence harvesting of sea otters from the southwest Alaska DPS.

Will subsistence hunting be affected by this action?

No. The ESA (like the MMPA) has a provision that allows Alaska Natives to harvest listed species for subsistence purposes. This provision does not constitute a Federal connection, so there is no consultation required under the ESA.

U.S. Fish & Wildlife Service
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Cover photo courtesy of Randall Davis,
Texas A&M University

October 2009

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Visit the Marine Mammals home page:
<http://alaska.fws.gov/fisheries/mmm/index.htm>

HABITAT USE OF NORTH PACIFIC RIGHT WHALES IN THE BERING SEA DURING SUMMER AS REVEALED BY SIGHTING AND TELEMETRY DATA

Alexandre N. Zerbini, Amy S. Kennedy, Brenda K. Rone, Catherine Berchok and Phillip J. Clapham

National Marine Mammal Laboratory, Alaska Fisheries Science Center, NOAA Fisheries, 7600 Sand Point Way NE, Seattle, WA, 98125-6349, USA



SIGHTING & PHOTO-IDENTIFICATION DATA

Table 1 – Sightings (individuals) and individual identifications recorded during the 2008/9 NPRW cruises in the Southeastern Bering Sea

| Year | Number of Sightings (individuals) | Individual Identifications |
|------|-----------------------------------|----------------------------|
| 2008 | 22 (34) | 7-9 |
| 2009 | 24 (36) | 7 |

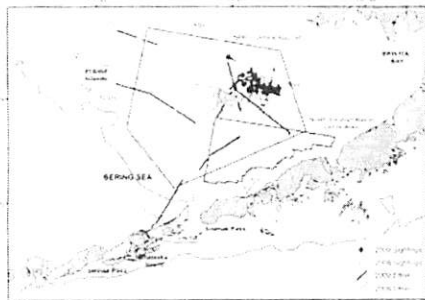


Fig. 1 – Ship survey effort and sightings of NPRWs in the SEBS in 2008 and 2009

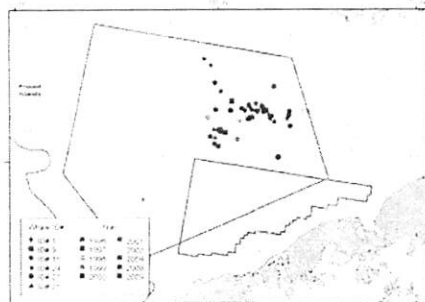


Fig. 2 – Resightings of individually identified NPRWs between 1996 and 2009



North Pacific right whales (NPRWs, *Eubalaena japonica*) were once abundant and widely distributed throughout the Bering Sea. Currently, only a small remnant of this population (estimated at ~30 individuals) inhabits the Southeastern Bering Sea (SEBS). Multidisciplinary studies funded by the Minerals Management Service (MMS) and the North Pacific Research Board (NPRB Project 720) were conducted in the summer of 2008 and 2009 to investigate distribution, movements and ecology of right whales in the SEBS, particularly with respect to the planned oil and gas development activities in the North Aleutian Basin (NAB) area.

The 2008 and 2009 shipboard surveys covered 1,206 and 1,013 nautical miles of on-effort trackline, respectively (Fig. 1). A total of 22 sightings (34 individuals) were recorded in 2008 and 24 (36 individuals) in 2009 (Fig 1, Table 1). Seven to nine whales were individually photo identified in 2008 (Table 1). These individuals matched whales previously photographed in the SEBS in 1996-2002 and 2004 (Fig 2). In 2009, seven whales were individually identified (Table 1) and matched whales seen in 1996-1998, 2000-2002 and 2008 (Fig 2). Three whales seen during the 2009 season were also photographed in 2008. Four location-only implantable satellite transmitters (SPOT5, Wildlife Computers) were deployed (1 in 2008 and 3 in 2009, Table 2, Fig. 3) with individuals being monitored for a mean of 40 days (range = 30-58 days) from July to October (Fig 4). These whales remained in a relatively small area (56-58°N and 163-167°W) in the SEBS middle shelf (between the 50 and 100m isobaths) for the period they were monitored. Two whales moved into the northern portion of the NAB area for 1-2 days (Fig. 4).

Data indicated that NPRWs use a relatively small area in the SEBS middle continental shelf during part of their summer feeding season. They also show that right whales may occasionally move into the NAB area possibly while searching for prey. Finally, sighting and telemetry data indicate habitat use that is consistent with the NPRW Critical Habitat established in the Bering Sea in 2006.

Acknowledgements

We thank the marine mammal scientists who participated in the surveys as well as the crew of the M/V Ocean Olympic, M/V Aquila and R/V Oscar Dyson. Funding for this study has been provided by the Minerals Management Service and the North Pacific Research Board.

The recommendations and general content presented in this poster do not necessarily represent the views or official position of the Department of Commerce, the National Oceanic and Atmospheric Administration, or the National Marine Fisheries Service

SATELLITE TELEMETRY DATA

Table 2 – Summary of satellite transmitters deployed in NPRWs in the SEBS in 2008 and 2009

| PTT ID | Deployment date & time | Latitude | Longitude | Tag longevity |
|----------|------------------------|-----------|------------|---------------|
| 21803-08 | 21-Aug-08, 20:15 | 56°55.3'N | 164°27.1'W | 58 days |
| 87636-09 | 25-Jul-09, 11:44 | 57°12.9'N | 163°00.7'W | 30 days |
| 87772-09 | 26-Jul-09, 19:40 | 57°07.6'N | 162°55.5'W | 36 days |
| 87637-09 | 14-Aug-09, 16:37 | 57°17.3'N | 163°46.8'W | 35 days |

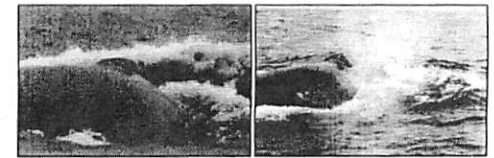


Fig. 3 – Implantable satellite transmitters deployed on NPRWs in the SEBS (left = PTT ID 87636, right = PTT ID 87637)

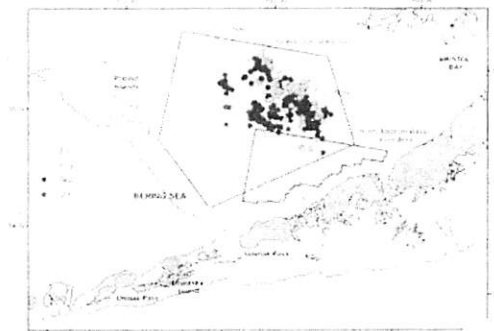


Fig. 4 – Monthly satellite locations from NPRWs tagged in the SEBS in 2008 and 2009



June 2, 2010

Dr. Jim Balsiger, Administrator
Alaska Region, National Marine Fisheries Service
National Oceanic and Atmospheric Administration
P.O. Box 21668
Juneau, AK 99802

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Dear Jim,

Oceana welcomes you back to Juneau and your role as Administrator for the Alaska Region of the National Marine Fisheries Service (NMFS). We look forward to working with you on the many important issues facing our oceans and fisheries. Currently, NMFS is undertaking a formal consultation process to evaluate the impacts of the fisheries it authorizes on endangered Steller sea lions. We write to encourage you to use that process and the unique opportunity it presents to take the necessary steps to protect sea lions in the short-term and move toward ecosystem-based management for the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) areas. The North Pacific Fishery Management Council (NPFMC) has provided a framework in the Aleutian Islands Fishery Ecosystem Plan, and you now have the opportunity to take further steps to implement ecosystem-based management.

The Steller sea lion has told, and will continue to tell, an important story about the health and resilience of the North Pacific marine ecosystems. The western stock of Steller sea lions has declined precipitously, and the current population represents a decline of approximately 80% since the 1960s. Moreover, irrespective of its overall status or any other population, the stock continues to decline sharply in the western Aleutian Islands. The steps NMFS takes to protect Steller sea lions and, in particular to ensure that there is enough prey available for them, is one indication of our progress toward ecosystem-based management.

As you are well aware, conflicts about the management of the BSAI and GOA groundfish fisheries and NMFS's compliance with the Endangered Species Act (ESA) led to lengthy and often contentious litigation from 1998-2003. *See, e.g., Greenpeace v. National Marine Fisheries Serv.*, 237 F. Supp. 2d 1181, 1184-87 (W.D. Wash. 2002). Since the conclusion of that litigation, neither the status of the stock nor the protection measures for Steller sea lions have improved appreciably. According to information presented to the NPFMC and its Steller Sea Lion Mitigation Committee, the endangered western stock of Steller sea lions has continued to decline over the western portion of its range and is not meeting criteria set out in the Recovery Plan for the Steller Sea Lion. *See Recovery Plan for the Steller Sea Lion V-21, available at <http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm>.*

We expressed similar concerns in a Feb 19, 2010 letter to Eric Schwaab and a March 10, 2010 to Dr. Jane Lubchenco. Those letters are attached for your information.

Dr. Jim Balsiger
June 2, 2010
Page 2 of 3

NMFS reinitiated formal ESA Section 7 consultation in 2006. A draft biological opinion (BiOp) was scheduled to be released on March 1, 2010. That draft has not been made public, and it appears that a process is being established that would include the release of a draft BiOp in July, a special meeting of the NPFMC in August, and the implementation of any changes to the protection measures in 2011. While the August NPFMC meeting may have merit as a forum by which to inform the public of the results of the BiOp, it cannot be used to further delay the implementation of measures necessary to prevent jeopardy to Steller sea lions. As this process is ongoing, summer and fall fishing for important Steller sea lion prey species would be authorized. In particular, NMFS's Office of Sustainable Fisheries would allow the Atka mackerel fishery in the western area of the Aleutians, where the sea lion population is declining most rapidly, to begin September 1, 2010.

It is our understanding that the draft BiOp scheduled for release on March 1 has been delayed in part to allow you to review and revise it. As you do so, you must bear in mind your particular role in supervising both the Office of Sustainable Fisheries and Office of Protected Resources. As the court explained this process in the last round of litigation:

In order to avoid jeopardy and adverse modification, the ESA requires that the "action" agency consult with an "expert" agency to evaluate the effects a proposed agency action may have on a listed species. . . . The final product of a formal consultation is a biological opinion (BiOp) which states the expert agency's conclusions regarding the possibility of any jeopardy or adverse modification that the proposed action would cause. When jeopardy or adverse modification is found, the expert agency must propose "reasonable and prudent alternatives" (RPAs), by which the action can proceed without causing jeopardy or adverse modification.

Greenpeace, 237 F. Supp. 2d at 1185 (citations omitted). Further, as in the previous consultation process, "NMFS's Office of Sustainable Fisheries is the 'Action' Agency and NMFS's Office of Protected Resources is the 'Expert' Agency." *Id.* at 1185 n.2. Given that you oversee both the "action" and "expert" agencies in this case, you have a particular responsibility to ensure that each play appropriate roles and fulfill the responsibilities outlined above and in the ESA. We request that you specify how that review and revision is being conducted and who at the "expert" agency, the Office of Protected Resources is undertaking this effort.

Finally, as you are aware, we have submitted requests pursuant to the Freedom of Information Act (FOIA) seeking the draft BiOps and underlying documents. We seek that information to better inform our members and the public at large about the process you are undertaking to "insure [that ongoing authorization of the BSAI and GOA groundfish fisheries] is not likely to jeopardize the continued existence of any endangered species . . . or result in the destruction or adverse modification of habitat for such species." 16 U.S.C. § 1536(a)(1). There is no legal or other basis on which to withhold those documents, and we encourage you to make them public expeditiously. Doing so is the best way to ensure a transparent public process.

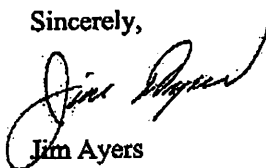
Ultimately, NMFS has the opportunity to ensure both vibrant fisheries and the recovery of the Steller sea lion population. In so doing, the agency should move toward sustainable levels of

Dr. Jim Balsiger
June 2, 2010
Page 3 of 3

fishing and ecosystem-based management. The public plays an important role in this process, and we encourage you to facilitate that role by making available the existing draft BiOp and informing the public about the way in which the Office of Protected Resources is undertaking any necessary revisions. Moreover, you should direct the Office of Sustainable Fisheries to take immediate action to prevent jeopardy or adverse modification by limiting or preventing fisheries for important prey species at least until consultation is complete.

Again, we welcome you back and look forward to working with you on this and other important issues related to restoring and maintaining the health, productivity, and biodiversity of the North Pacific marine ecosystem, fishing opportunities, and vibrant coastal communities.

Sincerely,



Jim Ayers
Vice President, Oceana

cc:

Dr. Jane Lubchenco, Administrator, National Oceanic and Atmospheric Administration
Mr. Eric Schwaab, Assistant Administrator for Fisheries, National Marine Fisheries Service
Mr. Eric Olson, Chair, North Pacific Fishery Management Council

Attachments:

1. February 19, 2010 letter to Mr. Schwaab
2. March 10, 2010 letter to Dr. Lubchenco



March 10, 2010

Dr. Janc Lubchenco
Administrator, National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

Dear Dr. Lubchenco:

We appreciate your work over the past year in public service and the steps taken by NOAA toward proactive, science-based management for our oceans. Nonetheless, we were disappointed to learn that the National Marine Fisheries Service (NMFS) has delayed public release of its draft Biological Opinion (BiOp) evaluating the impacts of the Alaskan groundfish fisheries on endangered and threatened species. As explained in our February 19, 2010 letter to NMFS Assistant Administrator Eric Schwaab, we are particularly concerned about the effects these fisheries are having on endangered Steller sea lions and their designated critical habitat. These impacts and the health of the Steller sea lion population are part of a larger, ongoing conversation among government, scientists, industry, communities, and conservation organizations about protecting the ecosystem and maintaining viable commercial fisheries in Alaska. NMFS's decision to delay indefinitely public release of the draft BiOp hampers efforts to move forward in that conversation and calls into question NMFS's commitments to transparency and compliance with the Endangered Species Act (ESA).

According to information presented to the North Pacific Fishery Management Council (NPFMC) and its Steller Sea Lion Mitigation Committee, the endangered western stock of Steller sea lions has continued to decline over the western portion of its range and is not meeting criteria set out in the Recovery Plan for the Steller Sea Lion. *See Recovery Plan for the Steller Sea Lion V-21, available at <http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm> (hereinafter "Recovery Plan").*¹ Further, the Recovery Plan establishes "competition with fisheries" as a potentially high threat to Steller sea lions, and a series of potential interactions between fisheries and sea lions, in particular the Atka mackerel bottom trawl fishery, are described in the Aleutian Islands Fishery Ecosystem Plan. *See, e.g., id. at IV-3 to IV-5; see also id. at IV-1* (stating that a threat rated "high" is one with "substantial impacts to recovery requiring mitigation and/or further research to identify impacts"). It is clear, therefore, that existing management does not "insure" that the fishing authorized in the BSAI and GOA Fishery Management Plans "is not likely to jeopardize the continued existence of" Steller sea lions "or result in the destruction or adverse modification of" their critical habitat. 16 U.S.C. § 1536(a)(1).

Given those facts, the thorough analysis required in a BiOp could conclude only that action must be taken to prevent the groundfish fisheries from causing jeopardy to Steller sea lions or adversely modifying their critical habitat. NMFS simply cannot continue to authorize fishing at

¹ This information is summarized in our February 19, 2010 letter to Eric Schwaab.

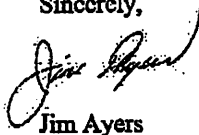
levels that do not "insure" against jeopardy and adverse modification. It must take action to protect Steller sea lions and their critical habitat.

Further, it is the agency's obligation to include the public in discussions about how to best protect sea lions and maintain vibrant commercial fisheries. In particular, NMFS must foster a transparent conversation about management measures for fisheries, such as the Atka mackerel trawl fishery, that compete with sea lions. The agency, therefore, should release its draft BiOp for public review. At a minimum, we urge you to initiate a discussion of the situation among stakeholders, and we stand ready to work with you and other interested parties to develop a reasonable plan to address this ongoing, unresolved conundrum. We should not be forced to go to court to have that conversation.

NMFS stated that the draft BiOp would be released on March 1. It has now been delayed indefinitely and without a public statement of reason. We are left to speculate about the agency's internal process, and we know that there are those working to delay any change and prevent the agency from fulfilling its responsibilities in order to allow another year of commercial fishing at current levels for important Steller sea lion prey species, like Atka mackerel. NMFS cannot allow those voices to prevail and leave the public out of the discussion and the agency out of compliance with the ESA.

Ultimately, NMFS must take action to protect sea lions. In so doing, the agency should move toward sustainable levels of fishing and ecosystem-based management. A transparent public process—or at least some dialogue—rather than litigation, will be the most effective way to achieve those goals in a lasting manner. We welcome the opportunity to discuss these issues with you or your representative at the earliest convenience. Such a meeting would be a good first step to find a way forward that protects the marine ecosystem while allowing for vibrant fisheries. We look forward to working with you on these important issues.

Sincerely,



Jim Ayers
Vice President, Oceana

cc:

Mr. Eric Schwaab, Assistant Administrator for Fisheries, National Marine Fisheries Service
Dr. Jim Balsiger, Administrator, National Marine Fisheries Service, Alaska Region
Mr. Doug Mecum Deputy Administrator, National Marine Fisheries Service, Alaska Region
Mr. Eric Olson, Chair, North Pacific Fishery Management Council



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Juneau, AK 99801 USA www.oceana.org

February 19, 2010

Mr. Eric Schwaab
Assistant Administrator for Fisheries
National Marine Fisheries Service
Bldg 3, 14th floor, Front office
1315 East West Hwy
Silver Spring, MD 20910

Dear Mr. Schwaab:

Congratulations on your appointment as Assistant Administrator for Fisheries. Oceana's Pacific Team and our entire organization look forward to working with you to ensure sustainable fishing practices and to continue the momentum toward ecosystem-based management. As you begin in your new position, there is a pressing need to strengthen protection measures for the endangered western stock of Steller sea lions in Alaska. While we are encouraged that the National Marine Fisheries Service (NMFS) is preparing a new biological opinion (BiOp), the agency is required to take immediate action to prevent commercial fishing from causing jeopardy to the Steller sea lion population or adverse modification of its critical habitat. In addition, NMFS has the opportunity to use the new consultation process to take a comprehensive approach to evaluating the impacts of commercial fishing on Steller sea lions. NMFS must complete the BiOp and fully consider the impacts of fishing—both in critical habitat and at the ecosystem level—on Steller sea lions and re-think the way in which the agency has interpreted available data about sea lion behavior and fishing effort.

The Steller sea lion has told, and will continue to tell, an important story about the health and resilience of the North Pacific marine ecosystems. The western stock of Steller sea lions has declined precipitously, and the current population represents a decline of approximately 80% since the 1960s. Moreover, irrespective of its overall status or any other population, the stock continues to decline sharply in the western Aleutian Islands. The steps NMFS takes to protect Steller sea lions and, in particular to ensure that there is enough prey available for them, is one indication of our progress toward ecosystem-based management.

The western stock of Steller sea lions are listed as endangered under the Endangered Species Act and critical habitat has been designated for the species. See 50 C.F.R. § 226.202; 58 Fed. Reg. 45,269 (August 27, 1993) (final rule designating Steller sea lion critical habitat). Accordingly, NMFS must "insure that any action . . . is not likely to jeopardize the continued existence of any endangered species . . . or result in the destruction or adverse modification of habitat for such species." 16 U.S.C. § 1536(a)(1). The agency's obligation to prevent jeopardy and adverse modification includes not just ensuring survival of the species but also allowing for recovery—an action can cause jeopardy or adverse modification when it does not allow for the recovery of the listed species. See *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004) ("Congress said that 'destruction or adverse modification' could occur when sufficient critical habitat is lost so as to threaten a species' recovery even if there remains sufficient critical habitat for the species' survival."); *National Wildlife Federation v. National Marine Fisheries Serv.*, 481 F.3d 1224, 1238 (9th Cir. 2007) ("The only reasonable interpretation of the jeopardy regulation requires NMFS to consider recovery impacts as well as survival."). Recovery means an "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act." 50 C.F.R. § 402.02; see

Mr. Eric Schwaab
February 19, 2010
Page 2

also Recovery Plan for the Steller Sea Lion V-1, available at <http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm> (hereinafter "Recovery Plan") ("[R]ecovery and conserve both mean to bring a species to the point at which it no longer needs the protection of the ESA, because the species is no longer in danger of extinction throughout all or a significant portion of its range.").

Conflicts about NMFS's compliance with these mandates and the mandates of the National Environmental Policy Act (NEPA) led to lengthy and often contentious litigation from 1998-2003. See *Greenpeace v. National Marine Fisheries Serv.*, 237 F. Supp. 2d 1181, 1184-87 (W.D. Wash. 2002) (detailing agency actions, procedural posture, and previous decisions). That litigation led to a series of revisions to the BiOp evaluating the impacts of commercial fishing on Steller sea lions and a Programmatic Supplemental Environmental Impact Statement promulgated by the agency for the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska. The court repeatedly rejected the agency's rationale for its conclusion that fishing was not causing jeopardy to the species or adversely modifying its critical habitat. As part of that litigation, the court enjoined all trawl fishing in designated critical habitat from July through August 2000. See *id.*

Since the conclusion of the litigation, the protection measures for Steller sea lions have not been improved appreciably.¹ During that time, however, NMFS has issued a revised Recovery Plan for the Steller Sea Lion and new research has been conducted. The stock itself, however, has not recovered, and there has been continued heavy fishing pressure on key prey species for sea lions. Indeed, the Eastern Bering Sea pollock stock has been pushed to its lowest abundance in thirty years. See J.N. Iannelli et al., *Assessment of the walleye pollock stock in the Eastern Bering Sea*. (Dec. 2009), available at www.afsc.noaa.gov/refm/stocks/assessments.htm. Given the fact that the protection measures have not been updated in light of those developments, a new BiOp is warranted.

As NMFS prepares the BiOp, however, it must be cognizant of the fact that the western stock of Steller sea lions is not recovering. The revised Recovery Plan for the Steller Sea Lion establishes very clear demographic criteria for recovery. To be considered for delisting, the population must have "increased (statistically significant) for 30 years (at an average annual growth rate of 3%), based on counts of non-pups (i.e., juveniles and adults)." Recovery Plan at V-21. In addition, the population also must be stable or increasing "in at least 5 of the 7 sub-regions. The population trend in any two adjacent sub-regions can not be declining significantly [, and t]he population trend in any sub-region can not have declined by more than 50%." *Id.*²

According to the best information, the population is not meeting those criteria. The most recent observation data show that, overall, the stock is not increasing in a statistically significant manner. See Letter from Robert Mecum, NMFS Acting Administrator, Alaska Region to Eric Olson, Chair, NPFMC (Jan 22, 2010) (stating that, overall, the annual rate of increase of the western stock is not significantly different from zero). Any increases that might be seen certainly do not satisfy the Recovery Plan's threshold of a statistically significant increase at an average annual growth rate of 3%. Moreover, there are sharp declines in pup production the western portion of the range. From 2001 through 2009, pup

¹Small alterations to the management measures were made in 2004. See 69 Fed. Reg. 75865 (Dec. 20, 2004). These changes generally relax protections in the Gulf of Alaska in order to "eas[e] the economic burden on GOA fishing communities." *Id.* at 75865.

²The Recovery Plan also establishes a series of "threats-based criteria [that] should be achieved in such a way that the threats do not re-emerge" prior to delisting. Recovery Plan at V-21. These measures including protecting haulouts and rookeries, gathering additional information about predation and other threats, and co-management agreements with Alaska Native Organizations. *Id.* at V-21 to V-23.

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production in the Western Aleutian Islands declined at a rate of -7% per year and the central Aleutian Islands pup production declined at a rate of -1% from 2001 through 2009. See L. Fritz, *Steller Sea Lion Population Status 2009* (Jan. 2010), available at www.fakr.noaa.gov/npfmc/current_issues/ssl.htm. These declines provide further evidence that the stock is not recovering.

Given the stock's continued decline over a significant portion of its range and its overall failure to meet the recovery goals, it is clear that the current management measures are not sufficient to prevent jeopardy or adverse modification. Accordingly, NMFS must take immediate action to protect Steller sea lions and ensure compliance with the ESA. One possible avenue for the agency would be to take emergency action pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. See 18 U.S.C. § 1855(c); 62 Fed. Reg. 44421 (Aug. 21, 1997). Any such action would have to be carefully tailored and based on a demonstration that the proposed changes to fisheries management would improve protection for Steller sea lions.

In addition to taking immediate action to prevent jeopardy and adverse modification, NMFS must complete an adequate BiOp and develop a set of protection measures that will allow for recovery of the western stock of Steller sea lions. The most recent full BiOp was completed in 2000. It "concluded that the FMP in existence was likely to jeopardize endangered Steller sea lions and adversely modify their designated critical habitat." *Greenpeace*, 237 F. Supp. 2d. at 1186. It, therefore, proposed a reasonable and prudent alternative (RPA), which was subsequently amended. That Amended RPA was the subject of the 2001 BiOp. *Id.* at 1187. In 2002, the federal district court found arbitrary NMFS's decision that the groundfish fisheries, as managed under the Amended RPA, are not likely to cause jeopardy or adversely modify critical habitat. Specifically, the court found

that the 2001 BiOp's no jeopardy and no adverse modification conclusions are arbitrary and capricious because they rely on the zonal approach to management which is not rationally connected to the data presented . . . [and that] the necessary analysis of the impact of the Amended RPA on Steller sea lions, their prey, and their critical habitat was not performed.

Id. at 1199, 1204. Subsequently, the parties agreed to an entry of judgment and dismissal of the case.

In response to the court's 2002 decision, NMFS issued a Supplement to the 2001 BiOp in 2003. That Supplement also concluded that the groundfish fisheries, as managed under the Amended RPA, are not likely to cause jeopardy or adversely modify critical habitat. See Supplement to the Endangered Species Act - Section 7 Consultation Biological Opinion and Incidental Take Statement of October 2001 58 (2003), available at <http://fakr.noaa.gov/protectedresources/stellers/biop2002/703remand.pdf> (hereinafter "2003 Supplement").

The 2003 Supplement, however, did not remedy the deficiencies in the 2001 BiOp. It relies on substantially the same "zonal approach" to protection measures rejected by the court and does not address the principal problem, which is that the data shows that "the 3-10 nm zone and the 10-20 nm zone are of more or less equal foraging importance for the most critical population segment." See *Greenpeace*, 237 F. Supp. 2d at 1198; see also *id.* ("NMFS cannot rationally rely on the difference in the ranking of the zones in developing the Amended RPA, which allowed fishing in portions of the 10-20 nm zone but continued to prohibit fishing in the 3-10 nm zone.").

Nor does the 2003 Supplement adequately evaluate whether the Amended RPA is likely to prevent jeopardy and adverse modification. It does compare two years of data about fishing effort and removals in critical habitat, but it also includes references to economic concerns that do not in any way speak to

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jeopardy or adverse modification and do not explain why increases in fishing effort in critical habitat from 10-20 nm will not cause jeopardy or adverse modification. *See, e.g.*, 2003 Supplement at 37 ("Given the very narrow shelf in the AI, closures out to 20 nm would completely close the fishery."), 41 ("If this area were closed (such as under the injunction in 2000) the fishery would be so severely restricted that much of the TAC would go unharvested . . ."), 53-57.

In its new status quo BiOp, NMFS has the opportunity to take a careful look at the available information and remedy these deficiencies. There are more telemetry data available, and significantly more information about fishing inside critical habitat areas. New telemetry data suggests broader habitat use in the winter. *See, e.g.*, B. Fadely, *Sea Lion Telemetry Update* (Jan. 2010), available at http://www.fakr.noaa.gov/npfmc/current_issues/ssl/ssl.htm. NMFS should re-examine the zonal approach and make a concerted effort to understand the likely effects on fishing behavior from the protection measures.

Further, NMFS is required to look carefully at the ways in which the impacts of commercial fishing on the ecosystem as a whole are affecting Steller sea lions. Indeed, the first stated purpose of the Endangered Species Act is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. 1531(b). It also is consistent with the steps taken by NMFS and the North Pacific Fishery Management Council toward ecosystem-based management.

NMFS must examine the effects of removing large quantities of key prey species from the ecosystem. This evaluation should not focus only on removals in critical habitat, but also must consider the level of biomass ecosystem-wide. Biomass, particularly of pollock, has declined dramatically since the 2001 BiOp and 2003 Supplement were prepared. These substantial declines are likely to affect prey availability for sea lions. In addition, the commercial groundfish fleet has taken a growing proportion of the biomass of Steller sea lion forage species in recent years. As calculated from 2009 SAFE reports, the total catch of Atka mackerel, Pacific cod, and pollock has increased from 9.9% of the age 3+ biomass in 1999 to 13% in 2002 and 14.7% in 2009. *See* <http://www.afsc.noaa.gov/refm/stocks/assessments.htm>. Accordingly, NMFS should consider carefully whether overall harvest rates, in addition to harvest in critical habitat, are preventing the species from recovering.

The Aleutian Islands Fishery Ecosystem Plan (AIFEP) provides useful information to inform the new BiOp. The AIFEP explains that commercial fishing has effects on the ecosystem and that those effects may impact Steller sea lions. For example, *See* Aleutian Islands Fishery Ecosystem Plan 32-33, available at http://www.fakr.noaa.gov/npfmc/current_issues/ecosystem/AIFEP12_07.pdf (hereinafter "AIFEP") ("[R]elationships between major Aleutian Islands fisheries, key predators[, such as sea lions], and the shared prey base within the pelagic food web illustrate both the common oceanic energy source for fisheries, and the extent to which fisheries may compete with each other and with other predators for energy within the ecosystem.").

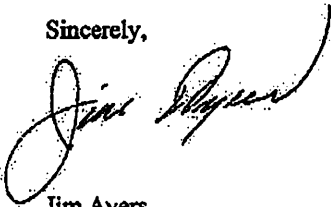
The AIFEP provides helpful information about the role that species of prey play in the diet of Steller sea lions, the interactions between commercial fisheries and sea lions, and the potential effects of removing biomass of these species. *See, e.g., id.* at 34 ("Atka mackerel are only 5% of the overall pollock diet, and 15% of Pacific cod diet, whereas they represent 65% of the Steller sea lion diet and 34% of the early 1990s NMFS trawl fishery catch."); 82 (discussing model simulations); 83 ("The strongest interactions identified are the pollock and Atka mackerel interaction, the Atka mackerel and Steller sea lion interaction, and the halibut and Pacific cod combined impact on sablefish.").

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The AIFEP suggests an integrated management approach in which ecosystem considerations and the needs of predators, such as Steller sea lions are considered as fishing levels are set. *See id.* at 84-85. As it prepares the BiOp and RPA, NMFS should look broadly at these interactions and this type of solution.

In the end, we congratulate NMFS for issuing the revised Recovery Plan and moving forward on a new BiOp. The agency, however, cannot let process stand in the way of protection. It is required to ensure compliance with the ESA by taking action to strengthen the protection measures for Steller sea lions. We look forward to working with you on this and other important issues related to restoring and maintaining the health, productivity, and biodiversity of the North Pacific marine ecosystem, fishing opportunities, and vibrant coastal communities.

Sincerely,



Jim Ayers
Vice President, Oceana

cc: Dr. Jim Balsiger
Mr. Doug Mecum
Eric Olson, Chair, North Pacific Fishery Management Council

Careful,
Deliberative and
More Robust

First, you
need to get smart

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: B Reports

| NAME (PLEASE PRINT) | TESTIFYING ON BEHALF OF: |
|--|--------------------------|
| 1 Dane Benton | MCA |
| 2 Larry Cotter | APIC/DA |
| 3 JOHN GAUVIN | Best Use Corp |
| 4 Stephanie Plonson/Mike Hyde | APA / American Sfd |
| 5 Michael LeVine/Jon Warranckuk | Oceana |
| 6 Todd Loomis/Tim Meintz | Cascade Fishing |
| 7 Kenny Down | |
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.