

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *CO*
Executive Director

ESTIMATED TIME 2 HOURS

DATE: September 27, 2012

SUBJECT: Steller Sea Lion Issues

ACTION REQUIRED

- (a) Review scoping comments for the 2012 SSL Protection Measures EIS from SSLMC, draft Council scoping comments.
- (b) Receive SSC review of SSL EIS analytical approach for Status Quo analysis.

BACKGROUND

The Steller Sea Lion Mitigation Committee (SSLMC) has met several times since May, 2012 to review the 2010 BSAI Groundfish Biological Opinion, review the order for NMFS to prepare and EIS, EIS requirements, and new information about SSLs in Alaska and Russia. The SSLMC has also used this new information to draft recommended scoping comments for the Council to consider. Scoping comments from the SSLMC will be handed out at the meeting as Item C-4(a)(1). Comments are organized into two groups: (1) where consensus was achieved, those comments are listed as consensus comments; (2) where consensus was not achieved, those comments are listed as less-than-consensus comments. At this meeting, the Council may wish to adopt the SSLMC comments, amend the SSLMC comments, or draft new comments for submission to NMFS during the scoping period. The scoping period for the 2012 SSL Protection Measures EIS ends on October 15, 2012.

The NMFS Alaska Region (AKR) has been working on analyzing the status quo (Interim Final Rule implemented in Jan. 2011) for the 2012 SSL Protection Measures EIS. At this meeting, NMFS will present their analytical approach to the SSC for review.



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2303 West Commodore Way, Suite 202, Seattle, WA 98199

September 20th, 2012

Jane Lubchenco, Administrator
National Oceanic & Atmospheric Administration
1401 Constitution Avenue NW
Room 5128
Washington, DC 20230

**Re: CIE Independent Review Reports for 2010 North Pacific Groundfish Fishery
Biological Opinion**

Dear Dr. Lubchenco:

I write on behalf of the Freezer Longline Coalition ("FLC"), which represents the owners and operators of the vessels that participate in the freezer longline sector of the Pacific cod fishery in the federal waters of the Bering Sea/Aleutian Islands and the Gulf of Alaska. The FLC members appreciate you taking the time to read this letter.

One of the primary cornerstones of the Obama Administration is its expressed commitment to scientific integrity. Consistent with this commitment, the National Oceanic and Atmospheric Administration ("NOAA") has issued policy proclamations commanding, among other things, that "[s]cientific integrity is essential to elevating science to its rightful place in informing government decisions, and more fundamentally, scientific integrity is essential for democracy." See <http://nrc.noaa.gov/scientificintegrity.html>. The issue addressed below fundamentally implicates NOAA's application of, and adherence to, this clearly expressed policy.

In 2010, the National Marine Fisheries Service ("NMFS") issued a North Pacific Groundfish Fishery Biological Opinion ("BiOp") that evaluated the effects of the North Pacific groundfish fisheries on Steller sea lions listed under the Endangered Species Act ("ESA"). The BiOp concluded that the fisheries were likely to jeopardize Steller sea lions and adversely modify their critical habitat and, consequently, NMFS imposed drastic and wide-ranging management measures. However, last week, three independent scientists – commissioned by NMFS through the Center for Independent Experts ("CIE") to review the BiOp – issued final reports that roundly criticize the findings, rationales, and conclusions of the BiOp. Some of the key determinations of these three scientists bear emphasis here:

- “It is my conclusion that the BiOp fails to provide reasonable support for the conclusion that continued fishing [for Alaska pollock, Pacific cod, and Atka mackerel] . . . in the BSAI and GOA is likely to jeopardize the survival or adversely modify critical habitat (JAM) of the western population of SSL [Steller sea lions]. There is no direct evidence that by removing fish, these fisheries compete with SSL in the central and western Aleutians and elsewhere.... In my opinion, the weight-of-evidence argument for JAM rests on speculation of what is thought possible rather than what is supported by scientific evidence.” (Dr. W. Don Bowen, Nova Scotia).
- “[T]here needs to be a critical and unbiased evaluation of the evidence. To a large extent, the BiOp fails in this regard.” (Dr. W. Don Bowen, Nova Scotia).
- “My evaluation of the information and data presented and the arguments constructed in the Biological Opinion, the additional information presented at the public meeting, and the legal framework governing the assessment is that the conclusions of the Biological Opinion are not supported.” (Dr. Brent S. Stewart, San Diego, California).
- “The size of the BiOp, and logic resulting from legal interpretations, makes for a document that is scientifically unsatisfying, to the point of causing frustration.” (Dr. Kevin Stokes, New Zealand).

In 2011, FLC filed a lawsuit against NMFS in which we have challenged, among other things, the findings and conclusions of the BiOp. NMFS defended the conclusions of the BiOp in the district court and obtained a largely favorable judgment. In the district court ruling the judge did not rule on the scientific findings of the BiOp, rather he deferred that judgment to the agency's evaluation; hence, his ruling should not be taken to be an endorsement of the science contained in the BiOp.

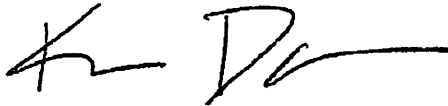
We appealed to the Ninth Circuit Court of Appeals, where the case is currently pending. The findings and conclusions of the three independent CIE reviewers, as summarized above, directly contradict the BiOp's conclusions as well as the arguments offered by NMFS to the district court in defense of the BiOp. In addition an independent panel of marine scientists assembled by the states of Washington and Alaska came to the same conclusions. *See* http://wdfw.wa.gov/conservation/steller_sealions/final_fmp_biop_ind_sci_rev_08oct2011.pdf.

The FLC has always maintained that the BiOp's conclusions are not supported by the best available science, are premised on speculative assumptions, and unfairly and irrationally single out fisheries as the cause of an unproven and hypothetical problem perceived by NMFS. The CIE review commissioned by NMFS confirms FLC's position in no uncertain terms. We firmly believe that it would be unjust, unfair, dishonest, and contrary to principles of scientific integrity for NMFS, as a public agency charged with managing our Nation's fishery resources, to continue to defend – in court – a decision that your agency knows has been categorically denounced by three expert and independent scientists whose opinions were solicited by NMFS itself. *Accordingly, we respectfully request that you, as NOAA's Administrator, formally (i) notify the Court of the new, important, and compelling information contained in the CIE reports and (ii) withdraw the BiOp.*

Our request is fully consistent with the principles of sound science and agency integrity espoused by the Obama Administration, NOAA, and NMFS, and we hope that the Administration will remain faithful to these principles. As quoted by NMFS in its scientific integrity policy, "anyone who doesn't take truth seriously in small matters cannot be trusted in large ones either." <http://nrc.noaa.gov/scientificintegrity.html> (quoting Dr. Albert Einstein).

Thank you for your consideration of this letter and our request. If you wish to discuss this matter further, please feel free to contact me at (206) 284-2522.

Sincerely,



Kenny Down
Executive Director
Freezer Longline Coalition

cc:

Dr. Rebecca M. Blank, Acting Secretary of Commerce
Mr. Samuel D Rauch, Assistant Administrator for Fisheries
Dr. James Balsiger, Administrator for NOAA Fisheries Alaska Region
The Honorable Senator Maria Cantwell
The Honorable Senator Patty Murray
The Honorable Senator Mark Begich
The Honorable Senator Lisa Murkowski
The Honorable Congressman Doc Hastings
The Honorable Congressman Don Young
Mr. Eric Olson, Chairman NPFMC
Commissioner Cora Campbell, Alaska Department of Fish & Game
Mr. Phil Anderson, Director Washington Department of Fish & Wildlife
Mr. Bill Tweit, Policy Lead Washington Department of Fish & Wildlife
Mr. Larry Cotter, Chairman SSL Mitigation Committee



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September 25, 2012

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, AK 99501-2252

Dr. James Balsiger, Regional Administrator
NOAA Fisheries, Alaska Region
709 West Ninth Street
Juneau, AK 99802-1668

RECEIVED
SEP 25 2012

Re: Agenda Item B-7: Protected Species Report
Agenda Item C-4: Steller Sea Lion Issues

Dear Chairman Olson, Dr. Balsiger, and Council Members:

The National Marine Fisheries Service (NMFS) has begun preparing an environmental impact statement (EIS) evaluating management changes needed to ensure that the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries do not cause jeopardy to endangered Steller sea lions or adverse modification of designated Steller sea lion critical habitat. *See* 77 Fed. Reg. 22750 (April 17, 2012). The agency has committed to work with the North Pacific Fishery Management Council (Council) and members of the public as it completes the NEPA process. As we have made clear in previous letters, this EIS should be consistent with the conclusions and analysis in the 2010 Biological Opinion. There is no new information or other factor that justifies deviating substantially from those conclusions, and the Council should not encourage or allow this process to be driven by those seeking to undermine NMFS's long-standing conclusion that fishing may contribute to the Western Populations' decline and failure to recover by competing with sea lions for important prey species. The EIS process might appropriately focus on alternative ways, should any exist, to achieve the level of protection needed to ensure that fisheries are not causing jeopardy to the Western Population of Steller sea lions or adverse modification of their critical habitat.

The EIS process is the result of a broad legal challenge filed by the State of Alaska, head-and-gut trawl companies, and freezer longliners. *See State of Alaska v. Lubchenco*, No. 3:10-cv-00271-TMB, slip op (D. Ak, Jan. 19, 2012). Among other claims, the plaintiffs in that suit challenged new management measures designed to alleviate competition between fisheries and Steller sea lions in the western Aleutian Islands. The new measures were developed as part of a formal ESA Section 7 consultation, begun in 2006 and completed in December 2010, in which NMFS concluded appropriately that, as then managed, the groundfish fisheries were likely to cause jeopardy to the endangered Western Distinct Population Segment of Steller sea lions and adverse modification of designated critical habitat. *See Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands*

Groundfish Fisheries Off Alaska, 75 Fed. Reg. 77,535 (Dec. 13, 2010). NMFS reached that conclusion based on the extensive decline of the population, its failure to recover, and ongoing decline in the western Aleutian Islands. One likely cause of the continued decline and failure to recover is competition for food with the industrial groundfish fisheries.

The court rejected all of the plaintiffs' ESA challenges to those conclusions. It found that "NMFS made reasoned findings sufficient to establish the required causal link between the proposed action and its jeopardy and adverse modification determinations" and "did not misapply the jeopardy and adverse modification standards," "rely on factors that Congress did not intend it to consider," or "fail[] to consider an important aspect of the problem or failed to articulate a rational connection between its findings and conclusions." *State of Alaska v. Lubchenko*, slip op at 27, 30, 33, 38. Thus, there is a clear set of parameters, established by NMFS and verified by the court, that must be applied to any management regime in the BSAI. The Council, including its Steller Sea Lion Mitigation Committee, must be mindful of these parameters and the need to conserve resources by not attempting to use the NEPA process inappropriately to undermine the substantive conclusions in the BiOp.

The recent Center for Independent Experts review, while relevant to the NEPA process, does not provide an opening to revisit the conclusions in the BiOp. As the reviewers note, better science would likely improve certainty in management choices; and better metrics to understand the changes in the Western Population of Steller sea lions might be developed in the future. For now, however, indicators like pup/non-pup ratios and scat samples are the best available way to estimate natality and feeding habits across the population. Those indicators—coupled with the substantial declines in the western Aleutian Islands and overall failure of the population to meet recovery criteria—support NMFS's longstanding and widely supported conclusion, in place since at least 1990, that fishing may contribute to the Western Populations' decline and failure to recover by competing with sea lions for important prey species, such as Atka mackerel, Pacific cod, and pollock.

More importantly, the uncertainties highlighted in the CIE reviews do not supersede NMFS's obligation to comply with the substantive protections mandated by the Endangered Species Act. Indeed, the ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). It reflects "a conscious decision by Congress to give endangered species priority over the 'primary missions' of federal agencies." *Id.* at 184. To effectuate this purpose, the ESA places on all federal agencies the substantive obligation to "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 obligation to "insure" against a likelihood of jeopardy or adverse modification requires the agencies to give the benefit of the doubt to endangered species and to place the burden of risk and uncertainty on the proposed action. *See Sierra Club v. Marsh*, 816 F.2d 1376, 1386 (9th Cir. 1987). Thus, the inquiry that the Office of Protected Resources, as expert agency, must undertake during consultation does not require a showing of causation and does not focus on the word "likely." Rather, the agency must use the best available science to determine whether its actions "insure" that jeopardy and adverse modification will not result. As the court made clear, the agency complied with those obligations here.

Rather than continuing to rehash old arguments, we should recognize that the decline and continued failure to recover of the western stock of Steller sea lions is telling us that we must find a better way to take fish from the ocean and must consider the needs of marine ecosystem as we do so. We should take this opportunity to consider the changes needed to build sustainable Alaskan fisheries, potentially those using hook-and-line and other lower-impact gear, rather than seeking to undermine legal and scientific requirements in order to allow a few more years of industrial trawling.

Accordingly, the Council and NMFS should look holistically at the impacts that the groundfish fisheries are having on the marine ecosystem, including Steller sea lions. Such an examination should include addressing declines in natality; local declines in some regions; rebuilding of the historically viable rookeries in the Pribilof Islands; and the effects of the past reductions of the prey base caused by commercial fisheries, in particular the past overfishing of Aleutian and Aleutian Basin/Bogoslof pollock stocks. The Council and NMFS should work toward addressing the interactions noted in the Aleutian Islands Fishery Ecosystem Plan (AIFEP), which explains that commercial fishing has effects on the ecosystem and that those effects may impact Steller sea lions. *See* Aleutian Islands Fishery Ecosystem Plan 32-33, *available at* http://www.fakr.noaa.gov/npfmc/current_issues/ecosystem/AIFEP12_07.pdf (“[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 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.

Ultimately, triage to stem the continuing sea lion declines in the Aleutians clearly is both justified and necessary. To avoid another emergency, however, we should consider more basic changes in fisheries management to address the shortcomings of a maximum yield approach and allow the Steller sea lion population to recover. Thank you for considering these comments, and we look forward to continuing our work with you on this important issue.

Sincerely,



Susan Murray
Senior Director, Pacific
Oceana

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



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The North Pacific Fishery Management Council's (NPFMC) Steller Sea Lion Mitigation Committee (SSLMC) met five times between May and September 2012 to receive presentations on new SSL research, review the requirements for alternatives for the 2012 SSL protection measures EIS, and draft scoping comments for the EIS. The following scoping comments are submitted to the NPFMC for their consideration.

The comments are organized into two sections. The first section is those comments for which the SSLMC achieved consensus. Following those comments are those for which there was less than consensus. Those comments are included to provide the NPFMC with the full range of issues that were discussed at the SSLMC meeting.

I. Consensus Comments

wDPS Population, Status, Demographics, and Distribution

- The geographic scope of the EIS is the entire range of the western DPS of Steller sea lions, and fisheries authorized under the Bering Sea and Aleutian Islands and Gulf of Alaska Fisheries Management Plans. Therefore, the EIS should consider effects beyond the western and central Aleutian Islands, and may include alternatives that extend beyond the western and central Aleutians.
- The EIS should consider Steller sea lion population status and trends beyond the Aleutians, including status and trends of Russian populations.
- The EIS should consider the impacts of Russian fishery closures (e.g., Commander Islands closures) on SSL trends in Russia.
- The Pribilof Islands and Round Island are geographically distinct from the Aleutians, and should be included in the EIS but analyzed separately from the Aleutians.
- The EIS should evaluate the stock status, population trends, and state and federal fishery removals for all Steller sea lion prey species, including salmon and herring.
- The EIS should include the best estimate of the total population of Steller sea lions in the western DPS, rather than only estimates from trend sites. Included should be the total population estimates and trend of SSLs in the Alaskan and Russian portions of the wDPS.
- The EIS should evaluate in greater detail the movements of SSLs between and among subareas in the Aleutians, and describe dispersal of SSLs from their natal rookeries.
- The EIS should consider the long-term (centuries to millennia) population trends of SSLs in the North Pacific (e.g., Maschner et al. unpublished report)
- The EIS should examine the proportion of habitat types (defined by bathymetry, etc.) where the majority of foraging dives occur (e.g. CRAWL model from Lander et al. (2011)), and compare those results to commercial fishery catch data.

Impacts of Fishery Restrictions

- The EIS should include a description and chart of the areas that have been closed to fishing in the AI for all reasons (SSLs, EFH, HAPC etc), and include an analysis of the additive effects of those closures for Steller sea lions; the prey resources and availability; and the limitations placed on fishing fleets.
- The EIS should analyze the redistribution of the fishing fleets, and the flexibility of the fleets to harvest other species or change gear types from previous regulation such as Amendment 80, various catch share programs, etc.
- The EIS should quantitatively analyze the similarities or differences between the size of fish harvested by commercial fisheries vs. size of SSL prey, the depths of fishery catch vs. SSL foraging dives, and the distance from rookeries or haulouts of commercial catch vs. typical SSL foraging trip distances.
- The EIS should include a summary (table or text) that clearly illustrates the timing of fishing activities, target fish behavior, and SSL behavior throughout the year.

Stock assessment and harvest rate

- Harvest rates should be revised to include the best estimate of total biomass for each species.
- The EIS should use analytical methods that include predator/prey relationships.
- The EIS should evaluate the impacts that multiple fishery restrictions have had on the consolidation of fishery catch into small geographic areas that remain open to fishing.
- In considering effects of fisheries on SSL prey base, EIS should consider the contribution of prey species that are not harvested by commercial fisheries in the Aleutians (e.g., Irish lords, sand lance, myctophids, cephalopods, and flatfish) to the SSL nutritional and energetic needs.

Other factors

- The EIS should provide greater detail in the use of pup/non pup or pup/adult female ratios as a proxy for natality, and should review other methods to estimate natality in the wDPS.
- The EIS should provide greater detail on the use and limitations of scat frequency of occurrence (FO) to describe the contribution of various prey species to the SSL diet, and should provide a summary and results (wherever possible) of other, emerging methods to assess SSL diet (fatty acid analysis, etc.).
- The EIS should expand the discussion of the presence and effects of contaminants (including organochlorines, heavy metals, and emerging contaminants) on Steller sea lions in the wDPS.

Research

- The EIS should address new and emerging technologies for surveys throughout the wDPS range (e.g., unmanned aerial survey technologies), and look forward to facilitate the permitting process for these emerging technologies.
- The EIS should address the prioritization of resources for fish biomass surveys in the Aleutians to heighten the importance of Atka mackerel and Pacific cod in survey design.

II. *Less than consensus comments*

- The Council is assisting NMFS in preparation of an EIS to accompany the 2010 Biological Opinion. Therefore, the Council's scoping comments should focus on NEPA issues to be considered and alternatives that should be evaluated consistent with the conclusions in the 2010 BiOp. Other issues, including disagreements with the BiOp or its conclusions are not appropriate considerations at this stage.
- The EIS should consider revisions to the harvest strategy to address predator needs in the TAC setting process. Changes to harvest strategy may be preferable as substitute for current standard approaches (e.g. no fishing zones in critical habitat, seasonal restrictions)
- The EIS should consider impacts of overfishing of Aleutian Islands pollock and Gulf of Alaska Atka mackerel.
- Because the scientific foundation of the 2010 Biological Opinion has been challenged legally, and questioned scientifically by reviewers from the Center for Independent Experts and a review commissioned by the States of Alaska and Washington, the reasonable range of alternatives in the EIS should not be constrained by conclusions of the 2010 Biological Opinion.
- The EIS should evaluate whether the assumptions in the Holmes et al. (2007) natality model are credible, and should reevaluate natality estimates with current SSL population dynamics data and should consider alternative estimates of natality (e.g., Maniscalco et al. 2009), and other alternatives to reduced natality (e.g., Horning and Mellish 2012)
- The EIS should evaluate the effect of the Aleutian Islands pollock closure on the population trends of pollock and SSLs in the Aleutians, and whether that closure remains necessary to protect Steller sea lions in the Aleutians.
- The EIS should evaluate the wDPS in the context of trends of pinnipeds globally (including ESA listed and unlisted populations) and the potential impacts of fishing activities on those populations.
- The EIS should reevaluate the rationale for seasonality of fishing restrictions, and reevaluate whether changes to existing fishing seasons may be warranted.
- The EIS should reexamine the appropriateness of the subareas identified in the wDPS, and whether population trends based on those subareas are appropriate with the potential for large scale SSL movements between subareas.
- The EIS should provide a greater synthesis of Bigg's killer whale predation in the Aleutians and the Commander Islands, and its potential contribution to SSL population declines and lack of robust recovery.
- The EIS should provide a summary, including important assumptions, etc., of the studies that have been conducted examining the relationships between fishing activities and SSL population trends.
- The EIS should consider whether conditions in the North Pacific have reduced carrying capacity for Steller sea lions such that recovery to pre-decline population levels is not possible.

Development of Environmental Impact Statement for Steller Sea Lion Measures based on Court Order 9/24/12														
Project Components	2012						2013						2014	
	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	
Council Meetings	Council reviews Terms of Reference for CIE review of Blop		Council reviewed NOI and preliminary range of alternatives. Established and tasked SSL committee		Juneau 14-15; 2010 Blop. EIS reds. Legal issues. Renew new scientific committee to begin draft SSLs, etc.	Seattle 16-17 and 30-31. Draft scoping comments. & alternative		Juneau 5-7. Council draft scoping comments and alternative	18-19 Juneau. Alternative development meeting	Juneau 7-9 and Seattle 28-29. Finalize SSLMC Alternative. Deliver to Council before council meeting	Council may review SSL Committee recommendations. Staffing and CIE review of Blop. Council recommends alternative SSL protection measures for analysis in EIS			
SSLMC			Reconstitute and identify SSLMC members	Org. Meeting										
ESA Documentation														
NEPA														
Rule making														
Abbreviations	<ul style="list-style-type: none"> GIS=Comment and Response Report GJE=Contract for Independent Experts SSL=Steller sea lion EIS=environmental impact statement NEPA=National Environmental Policy Act ESA=Endangered Species Act TBA= Location to be announced Assumes that the preferred alternative would not result in JAM 													

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-4 STELLER SEA LION ISSUES

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 Dave Fraser	A.C.D.C.
2 Merrick Burden	MCA
3 JOHN GAUVIN	AKSC
4 Kenny Down	FLL
5 Clem Tillion	Alou Enterprise Corp
6 Todd Loomis	Ocean Peace, Inc.
7 Jody Cook	FV Cape Reliant
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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.

Council motion- 10/7/12

C-4: Steller sea lion issues

With regard to scoping for the SSL EIS, the analytical approach, and related actions the Council moves the following:

The Council notes that all three of the CIE reviewers found that: 1) the conclusions of the 2010 BIOP are not supported by scientific evidence and are largely based on qualitative statements, opinions, and speculation rather than science; 2) the determination of jeopardy and adverse modification is not compelling or supported by the scientific record; 3) there is no evidence for the hypothesized indirect effects of fishing on SSL prey species; and 4) the RPA measures are not warranted, will have no positive effects on SSLs and have little utility as an adaptive management experiment.

Further, the Council also notes that the CIE reviewers' conclusions on the lack of scientific basis for the conclusions of the 2010 BIOP are in agreement with the conclusions reached separately by the Independent Scientific Review Panel (convened by the States of Alaska and Washington).

Thus, there have been two independent scientific reviews conducted by 7 independent scientists that have reached largely similar negative conclusions and critical findings regarding the 2010 BIOP and the RPAs stemming from it. This overwhelming expert criticism of the BIOP assumptions and bias constitutes new information providing the basis for NMFS to reinitiate consultation to reconsider its findings.

NMFS' statements at this meeting that it does not intend to take action in the near-term to modify the current RPA are inconsistent both with its prior statements of intent, and the CIE reviewers' conclusions that the current RPA measures are not warranted and will not have positive effects on SSLs. We believe NMFS should exercise its discretion to expeditiously reconsider its conclusions in the BIOP and the RPA. Given the conclusions of the CIE review, the Council recommends that NMFS:

1. Take appropriate regulatory action to vacate the management measures implemented by the interim final rule in time for the 2013 fishery and revert to 2001 measures except where no longer appropriate (e.g. HLA regs with 178 degrees west line and platooning),
2. Adopt an expedited schedule for completion of the EIS so that it supports the completion of rulemaking for a final rule with new final management measures such that these measures can be fully in place for start of the 2014 fishery.
3. Concurrent with the expedited EIS process, immediately re-initiate consultation with regard to Central and Western Aleutian Islands, and prepare a supplemental Biological Opinion that incorporates the findings and recommendations of the CIE review and Independent Scientific Review Panel. These findings substantially change what is the best scientific information that is now currently available, and the new supplemental

Biological Opinion should reflect this new information as it reconsiders the jeopardy and adverse modification determinations for groundfish fisheries in the Aleutian Islands.

4. In light of the continuing overall growth of the western DPS of SSLs and the findings of the two independent scientific review panels, the Council recommends the following as part of the EIS scoping process:
 - a) The range of alternatives analyzed should include: Alternative 1 would be the 2010 interim final rule; Alternative 2 would be the regulations and RPAs in place prior to adoption of the 2010 interim final rule adjusted to take into account changes in fishery management that have been implemented since 2003 (Amendment 80, etc); and Alternative 3 has the Alternative 2 regulations with reductions in the pollock closures in the central and western Aleutians. The Council notes that the SSLMC will be working on additional alternatives that may be appropriate to include in the EIS.
 - b) The recommendations of the SSC and the SSLMC report on scoping should be fully addressed.
 - c) The EIS analysis should fully incorporate the critiques and recommendations made by the CIE review reports from Dr. Bowen, Dr. Stewart, and Dr. Stokes and the Independent Scientific Review Panel report of October 8, 2011.
 - d) The EIS should address and respond to public comment received on the draft 2010 BIOP and the public comment received on the interim final rule.

The Council believes these actions are necessary to restore public confidence in the quality, validity, and reliability of NOAA science as well as the management and regulatory process.