


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: January 13, 1993

SUBJECT: Marine Mammals

ACTION REQUIRED

- (a) Receive status report on harbor seals.
- (b) Receive report on NMFS' proposed amendment to the MMPA.

BACKGROUND

Harbor Seals

At the December 1992 meeting, the Council received a brief status report on harbor seals from NMFS' Marine Mammal Lab staff. No new information is available at this time. However, the Marine Mammal Lab will have an expanded field report available by the end of this month, which will include survey data and abundance estimates for this species in the Gulf of Alaska.

Regarding the status of this stock, currently harbor seals are not listed under the Endangered Species Act (ESA) as either threatened or endangered, nor are they listed as depleted under the Marine Mammal Protection Act (MMPA). NMFS is currently reviewing what the procedure is and what information is needed to declare a stock as depleted, including the definition of a stock. A group of researchers will meet in Anchorage on January 28, 1993 to consider what should be considered in a conservation plan (MMPA's version of the ESA's recovery plan).

MMPA Amendments

Since 1988, when the MMPA was last amended, NMFS has been managing incidental takes of marine mammals in commercial fishing operations under the Interim Exemption Program, which expires on October 1, 1993. One part of this Exemption Program was a directive to NMFS to develop a management regime that would govern the incidental taking of marine mammals in commercial fishing operations.

The Council has been involved in the development of NMFS' proposal, and has reviewed two earlier drafts at the September 1991 and December 1991 meetings and submitted its comments to NMFS (Item C-6(a)). NMFS' final proposal, which presents recommendations for changes in the MMPA pertinent to commercial fishing operations, is included in your supplemental folder. Attached as Item C-6(b) is a summary of NMFS' final proposal (preferred alternative). Council staff will present this summary to you at this meeting.

NMFS's proposal recently was submitted to Congress and will be used in Congress's deliberations when amending the MMPA in 1993. No action is required by the Council on this issue, as the development of a regime to govern interactions will take place at the congressional level.

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

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September 23, 1991

Dr. Charles Karnella
Office of Protected Species
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

Dear Dr. Karnella:

The North Pacific Fishery Management Council has reviewed the Draft Legislative Environmental Impact Statement on NMFS' Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations. In general it is a very substantial document that obviously required great effort by you and your nationwide task force. The preferred alternative represents a good first step in the right direction because it acknowledges that marine mammals must be managed as part of the larger marine ecosystem shared by commercial fisheries. However, the Council shares many of the concerns raised by the Pacific Fishery Management Council in their letter to you dated September 18, 1991, and offers the following additional comments on the proposal, particularly as it relates to and will impact fisheries off Alaska.

ABR Calculation

The Allowable Biological Removal (ABR) concept is the centerpiece of the NMFS proposal. It is a controlling factor on the impacts of commercial fisheries on marine mammal populations, and is patterned closely after bycatch measures the Council uses to reduce the take of prohibited species such as crab and halibut in the groundfish fisheries off Alaska. The Council's major concern is that the formula for calculating ABR is the product of three factors, minimum population counts, maximum net productivity, and a safety factor, all of which are used very conservatively, and provide an unrealistically low and constraining ABR that has every potential to close the entire commercial fishery off Alaska.

The Council believes that ABR should be based on the best estimate of total stock size, not on the minimum stock estimate. That is, minimum estimates of abundance should be expanded to unsurveyed areas occupied by the stock using the best information available on stock distribution. Because there is an explicit safety factor in the formula for ABRs, there should be no need for additional conservatism in the estimate of population size. In addition, minimum population size can grossly underestimate actual population size, depending on the amount of data collected.

The analysis does not adequately describe the underlying population dynamics models used to predict population trends and times to recovery. Presumably, these models are similar to traditional models based on intrinsic rate of increase and carrying capacity. Some approaches to population dynamics have moved away from the notion of a fixed carrying capacity to a variable one which changes due to environmental and biological changes. Because of the difficulty in estimating a fixed carrying capacity, approaches for calculating OSP and ABR independent of carrying capacity should be considered in the DLEIS. In addition the effects of man on the maximum net productivity and carrying capacity need to be considered in estimating these factors.

The safety factor adjustment requires knowledge on the status of the current population with respect to carrying capacity, which may be difficult in some cases. One option that should be considered is a constant 0.5 safety factor, independent of population size. Another option would be a straight-line safety factor, increasing with population size. In any case, the choice of safety factor should be analyzed with respect to recovery times for the population and impacts on fisheries on a case-by-case basis.

Allocation and Preemption of the ABR

Allocation of the ABR must be regarded as a critical element of a comprehensive bycatch regime. Any mechanism established to distribute the ABR in the North Pacific should take into account and be consistent with the distribution of bycatch for halibut and crabs as well as the anticipated encounter rate by the involved fisheries. The ABR approach has great potential for confounding the Council's bycatch management regime; the two regimes must be very carefully integrated to be able to optimize the harvest of groundfish, while minimizing the takes of marine mammals and prohibited species. Conversely, the DLEIS fails to recognize the possible impacts that fisheries regulations may be having on the degree of marine mammal-fishery interactions. This needs to be examined further in the document, and in any ancillary studies concerning regulatory regimes and the status of marine mammal populations.

The large geographic distribution of many marine mammals probably dictates a multi-step process. Initially, we suggest that NMFS establish a total ABR based on the best scientific information available. NMFS should, according to the species range and historical take rates, initially allocate ABRs geographically according to the boundaries of the fishery management councils, which would then be given the lead to coordinate with their states to appropriately allocate their ABR between regional user groups. And possibly, ABRs should be managed on the basis of even smaller areas depending on the status of the marine mammal stocks in those areas. For example, the ABR may be set differently for northern sea lions in the Aleutians than off Southeast Alaska, if the status of those population segments substantially differs.

A major problem with the ABR procedure in the preferred alternative is that, under certain circumstances, it would allow subsistence or foreign takes, and takes by activities unrelated to fisheries, such as oil and gas operations, to preempt domestic fisheries entirely. This may happen even if the interaction of marine mammals and the preempted fishery is minimal and not likely to affect the health of the marine mammal population. Native subsistence rights in Alaska are well recognized, and the potential for preemption of commercial fisheries would lead to major confrontations. Foreign takes of marine mammals could hold our entire North Pacific fisheries hostage, unless strict international controls are imposed on all countries sharing segments of marine mammal populations that interact with our fisheries. High foreign takes potentially could be so high as to curtail even the subsistence take in our country.

At the very least, it is suggested that fisheries with "diminimus" interactions be exempted from the provisions of the proposed regime. NMFS will need to define the conditions for allowing exemptions. For example, an exemption could be granted in cases where all fishery removals amount to less than a very small proportion of the marine mammal population, or a small proportion of ABR, or a small proportion of uncontrolled removals. In these cases there is clearly little benefit to marine mammals from putting the commercial fisheries under quota management. For example, under the preferred alternative, the ABR of some 7,000 walrus would be used entirely by the subsistence take, leaving no allowance for the commercial fisheries, which are estimated to take fewer than 20 animals. In the case of northern sea lions, the situation is worse as there would be no removals allowed for commercial fisheries after subsistence and uncontrolled removals are subtracted from ABR.

If ABRs are used to control a commercial fishery, there must be mechanisms to monitor the take and enforce the regime. Incentives must be developed to encourage fishermen to fish cleanly with regard to marine mammals, and those operations with high bycatch rates need to be controlled so they will not close down the entire fishery. A mechanism might also be provided to reward those operations that help marine mammals, for example, when a vessel is used as a refuge by a sea lion escaping a killer whale.

Social and Economic Impacts

Under some alternatives, it is possible that many fisheries could be severely restricted or even prevented, causing massive social and economic dislocation. These effects are treated very lightly in the draft document, and need much more expansion. The assessment in the DLEIS of impacts on trawl fisheries off Alaska, for example, first says that they would probably not exceed their ABR allocations and would not be significantly affected under the preferred alternative. Then it goes on to say that subsistence takes of Steller sea lions may exceed the ABR, and that the trawl fisheries could be subject to significant restrictions, closures, or penalties. It concludes that these "...could result in substantial direct monetary losses to the industry, losses associated with displacement into other fisheries, and economic hardship and dislocation in many Pacific Northwest and Alaska communities that are dependent on these fisheries." The fisheries off Alaska, combined for groundfish, shellfish, herring and salmon, annually produce \$1.5 billion dollars in exvessel value, over \$3.5 billion wholesale, and provide employment for over 30,000 fishermen and 17,000 processing workers. These economic impacts need to be addressed much more comprehensively in the next draft of the DLEIS, and the impacts on State waters fisheries need to be studied also.

New Funding

And finally, there is the issue of funding to support implementation of measures proposed in the preferred alternative. Additional population assessments and surveys will be needed to provide the data necessary for determining ABR. There will have to be more monitoring and enforcement also. It may be unrealistic to expect massive new funding for these additional programs, and simply adding these programs to the NMFS Regions without major new injections of funds could be devastating to many ongoing, fishery management programs.

Toward a Viable Program

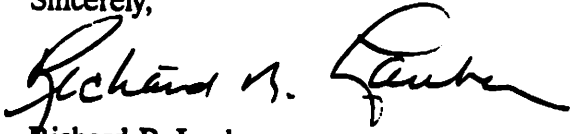
In conclusion, the North Pacific Council commends NMFS for its efforts to initiate the development of a viable program to manage marine mammals holistically within the marine ecosystem shared by commercial fisheries. We hope you will view constructively the concerns identified above, and we look forward to reviewing the next draft of the DLEIS.

We encourage NMFS to continue to move forward aggressively in developing a new regime. However, we encourage you to first examine the information that has been developed these past five years, to identify how well each element of the current program has worked, to separate out those measures that have been unsuccessful, and then proceed with designing solutions that will solve identified and proven problem areas in the interactions of marine mammals and commercial fisheries. We need this evaluation before moving that next step toward a new regime.

The North Pacific Council and the industry are fully prepared to work with you in that considered process. More immediately, the Council is taking steps to minimize the impacts of commercial fisheries under its jurisdiction on walrus and Steller sea lions. We recognize that those measures provide only temporary solutions, and that a comprehensive program is needed for the future. We encourage NMFS to seek an extension of the current regime until the long term solution can be fully developed. This issue is much too important to the commercial fisheries, and much too critical to the well being of the marine mammal populations, for a decision to be made in haste.

Thank you for seeking our comments on this most important matter.

Sincerely,

A handwritten signature in cursive script that reads "Richard B. Lauber". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Richard B. Lauber
Chairman

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

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December 20, 1991

Dr. Charles Karnella
Office Of Protected Species
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

Dear Charles:

At our December 3-9 meeting, the North Pacific Fishery Management Council received a report on the revised proposed amendment by NMFS to the Marine Mammal Protection Act. We appreciate the hard work that your agency has put into addressing the many comments and concerns raised with the earlier proposal. However, the Council remains concerned with the consequences that the proposed marine mammal quota system may have on the fisheries and concurs with comments from our industry advisory panel that more time is needed for review and development of the proposal.

Concerns raised by our Advisory Panel include the following:

1. The new PBRs are still based on minimum population estimates rather than best available data.
2. It appears that the goal of maintaining marine mammals at OSP levels remains part of the program. The AP believes that this goal does not adequately address marine mammal population changes in response to ecosystem changes.
3. The document does not clarify the criteria which will be used to determine how fisheries will be grouped or defined.
4. More details are needed on how PBR allocations will be made.
5. Terms used throughout the document are not clearly defined. This is particularly troublesome because three federal laws interact here and some terms are defined differently in these laws (the MMPA, ESA, and MFCMA).

Our Scientific and Statistical Committee noted that the new document responds to comments of the Council on the earlier proposal and attempts to eliminate several problems found in the earlier document, for example:

1. The allocation of the PBR (formerly the ABR) will now be governed by NMFS with the advice of Council and State agencies.

2. The PBR calculation is simplified by eliminating one level of correction factor by not applying a recovery factor (F_r) to stocks more than two-thirds of K .
3. A number of areas of uncertainty, including OSP concepts, monitoring requirements, user fees and implementation dates are clarified.

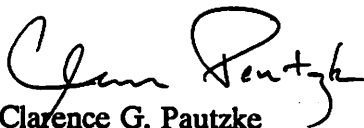
However, the SSC still has the following concerns:

1. The absence of flexibility in the requirement that the minimum population estimate must be used in calculating the PBR. The SSC believes that where good population estimates exist, these should be used in preference to the minimum estimates. Minimum estimates should be used as a default value.
2. The OSP concept remains difficult to rationalize in view of the historical evidence that shows carrying capacity to be variable. Current OSP application implies constant carrying capacity and that downward trends in marine mammal populations must be caused by human activities. The SSC urges that the application of this concept should be reviewed as well as the value of the concept itself.
3. The document does not contain a table of the population estimates that will be used in determining the PBR. Calculations, however, based on available information suggest that the northern sea lion and fur seal PBRs will not limit existing fisheries, but that walrus may be limiting. The walrus issue must be examined in light of the incidental take of 20 walruses by fisheries in 1990 versus a subsistence take of at least 10,000 animals. The current NMFS proposal implies that all commercial fisheries that may take walrus incidental to fishing could be stopped.

As noted in our earlier letter of September 23, 1991, the Council commends NMFS for its efforts to initiate the development of a viable program to manage marine mammals holistically within the marine ecosystem shared by commercial fisheries. The Council echoes the concerns raised above by our industry and scientific panels. Any new management system involving marine mammals and fisheries must be well thought out and analyzed for its potential ramifications. We urge you to take these concerns into consideration as the proposal is refined for submission to Congress.

Thank you for the additional opportunity to review the proposal.

Sincerely,



Clarence G. Pautzke
Executive Director

cc Steve Pennoyer

Summary of NMFS's Proposed Regime to Govern Interactions
Between Marine Mammals and Commercial Fishing Operations

Introduction

This paper briefly summarizes the salient points of NMFS's proposed recommendations for changes in the Marine Mammal Protection Act (MMPA) pertinent to commercial fishing operations. The document, which the Council reviewed and commented on twice (Sept. 91 and Dec. 91), is NMFS's final version and has substantial changes from earlier drafts. This final version incorporates many of the suggestions put forth by the NPFMC. NMFS's proposal recently was submitted to Congress and will be used in Congress's deliberations when amending the MMPA in 1993.

NMFS's proposal is the culmination of a directive to that agency to develop a management regime that would govern the incidental taking of marine mammals in commercial fishing operations. Since 1988, when the Act was last amended, NMFS has been managing incidental takes of marine mammals under the Interim Exemption Program, which expires on October 1, 1993.

Optimum Sustainable Population

The final proposal contains several elements. The primary goal is to maintain all marine mammal stocks within an Optimum Sustainable Population (OSP) level. It is NMFS' intent to use OSP determinations as the basis for establishing removal levels when adequate data are available, including carrying capacity, population estimates, and stock definition. The proposal is based on NMFS' belief that the removal of animals from most, but not all, marine mammal stocks may be authorized and is not inconsistent with the purposes of the MMPA.

Potential Biological Removal

During the interim, if the data to determine OSP are not currently available, determination of the number of removals will be based on calculating Potential Biological Removal (PBR) levels. PBRs would be based on best available data and is determined using the following equation in cases where sufficient information is available to determine the status of a stock relative to its OSP:

$$(PBR_{OSP}) = (N_{MIN}) \times (R_{MNPL}),$$

where N_{MIN} is the best estimate of minimum stock abundance, and R_{MNPL} is the per capita rate of increase at maximum net productivity level (MNPL). If the stock is depleted (i.e., below its OSP), or in the absence of adequate information to make OSP determinations, NMFS proposes calculating PBR by using the following equation:

$$(PBR_{EST}) = (N_{MIN}) \times (R_{MNPL}) \times (F_T),$$

where F_T is a stock recovery factor. In the proposal, the recovery factor would be 0.1 for endangered stocks and 0.5 for depleted or threatened stocks, or stocks of unknown status. The following table is NMFS' estimates for calculating PBR levels for a few marine mammals present in the Council's jurisdiction.

Stock	Status	Abundance Estimate	R_{MNPL}	F_T	PBR	Total Removal	Class
Steller Sea Lion	Threatened	39,396	0.06	0.5	1,182	300	Alpha
Harbor Seal	No status	185,000	0.06	0.5	5,550	3,000	
Walrus	Above OSP	234,020	0.03	1.0	7,021	6,850	
Harbor Porpoise	No status	unknown	0.02	0.5	--	100	Alpha

Stock Assessment/Research

Another goal of the proposal is the development of a complete stock assessment program and a long-term stock research program. The stock assessment program will obtain the data needed to develop Stock Assessment Reports (which the Council can review and comment), and to make OSP/PBR determinations.

Categories of Stocks and Fisheries

To assist NMFS in focusing its management actions on problem fisheries, a classification scheme for interacting fisheries is proposed. Marine mammal stocks will be categorized according to their status and removal levels with respect to PBR. Each marine mammal stock would be placed into one or two categories, Alpha or Beta. Class Alpha stocks are stocks designated endangered, threatened or depleted, or have total takes equal to or greater than the calculated PBR. Class Beta stocks are stocks not designated as endangered, threatened or depleted, and have total annual takes substantially less than the calculated PBR.

Fisheries are first divided into takers and non-takers. Takers are further divided based on interactions with Class Alpha and Beta stocks and removal data. From this, NMFS devised three categories of fishery designations for the takers:

- Category I fishery A fishery that takes a Class Alpha stock and whose level of take has a significant impact on that stock of marine mammal.
- Category II fishery A fishery taking a Class Alpha stock and whose level of removal has an insignificant impact on the stock, or a fishery taking Class Beta stock and whose level of take has a significant impact on the stock.
- Category III fishery A fishery which takes only Class Beta stocks and whose level of take has an insignificant impact on the stock.

NMFS proposes to define a level of take as "significant" if it increases the time needed for stock recovery by ten percent or more for Alpha stocks or causes the removal of > 0.5 percent of the minimum abundance estimate of Beta stocks. NMFS has estimated that a one percent increase in level of take of pinnipeds would cause recovery times to increase by approximately ten percent.

Category I and II will be monitored annually. Category III fisheries would be monitored every 2-3 years or as needed. Historical data will be used to determine which fisheries are takers and which are non-takers. All vessels fishing in Category fisheries I through III will be required to register

annually with NMFS to obtain an MMPA permit authorizing a certain level of take. NMFS will have the authority to deny or revoke a permit, if necessary to protect a marine mammal stock.

Allocating PBRs

Allocations of PBRs will be proposed for all fisheries interacting with Class Alpha stocks (Categories I and II). Allocations will be based on socio-economic factors, biological considerations, historical take rates, past performance to reduce takes, and ability to reduce takes. The process will be similar to the way the Council currently establishes the apportionment of PSCs. This proposal only addresses takes directly associated with commercial fishing activities. Apparently, other sources of takes, such as Alaska Native subsistence harvest, will be addressed in other amendments to the MMPA. It is unclear whether an established PBR includes all user groups, or just commercial fishing.

Intentional lethal takes will only be allowed to ensure personal safety or to alleviate a demonstrated significant negative impact on a fishery. Intentional lethal takes will not be allowed from any endangered, threatened or depleted mammal stock. In addition, intentional non-lethal takes, such as shooting near a marine mammal, will be allowed only to ensure personal safety and to protect gear or catch, after NMFS finds that this behavior would have no significant adverse effect on stocks.

Funding

Two sources of funding are proposed to support the programs presented in this proposal: standard registration and fishery-specific fees. The former is already being assessed, and covers the costs of administering the program. The fishery specific user fees could be assessed for enhanced monitoring requirements in particular fisheries, say where PBR quotas are likely to be exceeded. Basically, the fishermen will have the option to continue fishing if they pay these additional costs to ensure that quotas are not exceeded. Costs include increased observer coverage.

The proposal would be phased in over a two year period, by which time Stock Assessment Reports, Scientific Review Groups, long-term monitoring programs and adequate public participation will have been established. NMFS believes that total annual removals of some stocks may exceed the PBR in the initial years, but will be closed or severely restricted starting in 1995 if removals were not reduced to levels less than or equal to the PBR.

as an Export Intermediary and, if such sales do occur to pay a commission to BALMAC; or

(3) Both (1) and (2) above
(b) Enter into and terminate exclusive agreements with Export Intermediaries wherein:

(1) BALMAC agrees to deal in Products in the Export Markets only through that Export Intermediary;

(2) That Export Intermediary agrees not to represent BALMAC's competitors in the Export Markets or not to buy from BALMAC's competitors for resale in the Export Markets; or

(3) Both (1) and (2) above.
(c) Enter into exclusive or nonexclusive agreements with an individual buyer in the Export Markets to act as a Purchasing Agent with respect to a particular transaction.

(d) On behalf of BALMAC itself, or while acting as an Export Intermediary for separate Suppliers:

(1) Establish prices and quantities at which Products will be acquired, sold or resold for or in the Export Markets;

(2) Establish the price and other terms of sale at which Services will be acquired, sold or resold for or in the Export Markets;

(3) Allocate foreign territories or customers among BALMAC's Export Intermediaries or to a Supplier and that Supplier's Export Intermediaries; or

(4) Any combination of (1), (2), and (3) above.

BALMAC may engage in the activities in (d) above by agreement with BALMAC's Export Intermediaries, by independent agreement with separate Suppliers, by agreement with that Supplier's Export Intermediaries, or on the basis of its own determination.

(e) Disclose to an individual buyer in the Export Market prices and other terms of export marketing or sale.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, BALMAC will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. BALMAC will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the

Secretary of Commerce believes that the information or documents are required to determine whether the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate continue to comply with the standards of Section 303(a) of the Act.

Definitions

For purposes of this certificate, the following terms are defined:

(a) "Export Intermediary" means:

(1) "Broker"—a person that locates buyers in the Export Markets for the Supplier or that locates Suppliers for buyers in the Export Markets on a straight commission or cost-plus commission basis and that, in so acting, offers, provides or engages in some or all Services;

(2) "Distributor"—a person that purchases Products for its own account from a Supplier, that may establish the resale price or maintain an inventory of Products for perspective, unidentified sales and that, in so acting, offers, provides or engages in some or all Services; or

(3) "Sales Representative or Agent"—a person that identifies and locates Products for sale; gives advice on, or chooses among prospective buyers in the Export Markets, advises on or negotiates prices, quantities, and other sale terms and conditions, sells Products for its own account or for the account of others; and that, in so acting, offers, provides or engages in some or all Services.

(b) "Purchasing Agent" means an intermediary who identifies and locates Products for purchase; gives advice on, or chooses among prospective Suppliers; advises on or negotiates prices, quantities, and other purchase terms and conditions; and purchases Products for its own account or for the account of others; and who, in so acting, offers, provides or engages in some or all Services.

(c) "Supplier" means a person who produces or sells Products or Services to be exported from the United States.

Protection Provided by Certificate

This Certificate protects BALMAC, its partners, officers, and employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in this Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date until it is

relinquished, modified, or revoked as provided in the Act and Regulations.

Other Conduct

Nothing in this Certificate prohibits BALMAC from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to BALMAC by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of BALMAC or (b) the legality of such business plans of BALMAC under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

A copy of each certificate will be in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20501.

Dated: December 29, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93-304 Filed 1-6-93; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 91-6133]

Endangered and Threatened Wildlife and Plants: Steller Sea Lion Recovery Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Response to comments on Plan and notice of availability of Plan.

SUMMARY: NMFS published an emergency ruling listing the Steller Sea Lion as threatened under the

Species Act (ESA) on April 5, 1990 (55 FR 12645), and a final rule on November 26, 1990 (55 FR 49204).

Section 4(f) of the ESA requires that NMFS develop and implement plans for the conservation and survival of endangered and threatened species. Accordingly, the Assistant Administrator for Fisheries appointed a Steller Sea Lion Recovery Team (hereinafter referred to as the Recovery Team) who submitted a draft Steller Sea Lion Recovery Plan (referred to as the Recovery Plan) to NMFS on February 15, 1991. NMFS released the draft Recovery Plan for public review and comment on March 15, 1991 (56 FR 11204). The Recovery Team, to the maximum extent possible, incorporated all comments that were submitted to NMFS during the technical review process into the draft Recovery Plan. The final draft of the Recovery Plan by the Recovery Team was submitted to NMFS for review on October 3, 1991. This notice summarizes and responds to comments received on the draft Recovery Plan. The draft Recovery Plan was reviewed and finalized by NMFS, and a final Recovery Plan is now available upon request.

ADDRESSES: Requests for the Steller Sea Lion Recovery Plan should be addressed to Steller Sea Lion Recovery Plan, either the National Marine Fisheries Service, Office of Protected Resources/22, 1335 East-West Highway, Silver Spring, MD 20910, or the NMFS, Alaska Regional Office, POB 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Michael Payne at (301) 713-2322.

COMPLEMENTARY INFORMATION: NMFS received nine sets of comments regarding the draft Recovery Plan.

Generally, the draft Recovery Plan was considered (by consensus of those who provided comments) to be comprehensive and exceedingly well done, providing good suggestions regarding specific management actions, as well as future research activities, required for assuring the recovery of Steller sea lions. Comments received by NMFS during the technical review process focused on the following issues: Recovery Plan Coordinator, Reclassification criteria suggested by the Recovery Team in the draft Recovery Plan, critical habitat and habitat protection, disturbance at rookeries and haulout sites, determining prey requirements (and protecting prey species) of Steller sea lions, commercial fisheries impacts on Steller sea lions, and public education. The following information addresses comments received on each of these issues.

Reclassification Criteria

The draft Recovery Plan described criteria, and an application of these criteria, for determining whether the species should be reclassified from a threatened to an endangered status under the ESA. Several commenters commended the Recovery Team for attempting to develop a framework for making decisions regarding the status of Steller sea lions. One commenter suggested that the approach (for reclassification) seemed reasonable and that it be adopted. However, two other commenters questioned whether there was any biological or theoretical bases for the threshold values recommended by the Recovery Team, stating that there was no explanation given for the value of "17 percent of a benchmark population" threshold point for the endangered cutoff value in the draft Recovery Plan. A commenter continued by stating that "it is hard to argue for or against the specific trigger points recommended (in the draft Recovery Plan) without further information." Several commenters agreed that a biological justification must be provided for the threshold values used in the reclassification criteria for Steller sea lions, and that these should be adopted by appropriate review. The same comment regarding biological justification of the threshold criteria was extended by one commenter to the "40 percent of a benchmark population" value suggested in the draft Recovery Plan as a cutoff determination for listing or delisting the species as threatened. Another commenter suggested that this section should be expanded to address the removal of the species from the list of depleted species under the Marine Mammal Protection Act (MMPA). That is, if the population data on Steller sea lions satisfy the recommended delisting criteria and the species is removed from the list of threatened species, it is possible, if not likely, that it could still be considered depleted under the MMPA. Therefore, to ensure that this plan also meets the planning requirements of the MMPA when Steller sea lions are not listed as endangered or threatened under the ESA, the commenter recommended that either: (a) This section be expanded to describe the threshold at which Steller sea lions would no longer be considered depleted under the MMPA; or (b) a new task be added to define this point as and when necessary.

Response: The draft Recovery Plan suggested that an objective evaluation of whether and how Steller sea lions should be listed under provisions of the ESA could be made by comparing the

most recent data available with the measurable criteria which were described in the draft Recovery Plan. In the draft Recovery Plan the Recovery Team recommended that evaluation criteria should be applied based on a percent of a benchmark population value in the Trend Count study area (for example if the adult/juvenile Trend Count in the Kenai-Kiska area is less than 17 percent of the benchmark value, the species should be listed as endangered), or based on trends of the adult/juvenile Trend Count or a Pup Production Index from the survey data (see Part II, Section 1.C, draft Recovery Plan).

It is the intent of NMFS to support the recovery activities outlined in the Recovery Plan. However, concerns associated with the proposed evaluation criteria regarding the quantitative measures for changing status under the ESA require further analysis and discussion. Thus, NMFS has not adopted Part II, Section 1.C of the draft Recovery Plan at this time. NMFS believes that the strategy in this section focuses on small, short-term changes (e.g., in II.1.C(3), a 10-percent decline over three years) but neglects an analysis of long-term trends and the effects of stochastic variability. NMFS supports and will evaluate a combination of techniques, like population viability analysis and analysis of data on historical trends, to provide a more robust estimation of the likelihood of extinction. At the conclusion of these analyses, NMFS will reconsider the threshold levels proposed by the Recovery Team, as well as other criteria which emerge as part of the analytical procedure.

However, section 4 of the ESA requires that objective, measurable criteria be incorporated into each Recovery Plan which, when met, would result in a determination that the species be removed from the list. The data currently available on Steller sea lion relative abundance come from aerial photographic surveys of adults and juveniles and land-based counts of pups (section II.E.3 of Recovery Plan). Preliminary simulation studies conducted at an April 1992 workshop indicated that the confidence interval around the recent estimates of adult and juvenile numbers of sea lions from aerial surveys is quite small; therefore, NMFS has adopted the delisting criteria proposed in the draft Recovery Plan. However, these criteria will also be evaluated as part of the risk analysis to determine their adequacy for long-term protection of the species.

The Recovery Team believed that the goal of this Recovery Plan will be met

when the Steller sea lion population has recovered to the extent that it can be removed from ESA listings. As previously suggested, it is possible that at that point the species would still qualify as depleted under terms of the MMPA. In that case, the conservation plan requirements of the MMPA would apply. At present, the Recovery Plan acts as both an ESA and an MMPA Plan. When the Steller sea lion is removed from ESA listing, the Recovery Plan, at that time, will be reviewed and revised as necessary to reflect MMPA requirements, and the biological and ecological situations.

Steller Sea Lion Recovery Plan Coordinator

Several commenters recommended that NMFS immediately take steps to appoint or hire a full-time Steller sea lion Recovery Plan coordinator to implement the Recovery Plan.

Response: The draft Recovery Plan recognized the need for a full-time Recovery Plan coordinator to facilitate recovery activities outlined in the Plan (draft Recovery Plan, Stepdown Outline, Item 7(1)). Accordingly NMFS employed such a position. Some of the duties of the Recovery Plan coordinator include evaluating and developing regulations, designation of critical habitat, ESA section 7 consultations, providing liaison between NMFS Steller sea lion recovery efforts and the fishery management councils, enforcement agencies, researchers and other interested parties.

Habitat Requirements and Protection

The ESA requires that critical habitat be identified and designated, to the extent possible, in conjunction with or shortly after a species is listed. Section 15, page 59, of the draft Recovery Plan recognized the need to identify critical habitat for Steller sea lions. Several commenters noted that recommendations for critical habitat have been submitted to NMFS by the Recovery Team and recommended that NMFS (1) review the Recovery Team's recommendation; (2) complete the necessary economic impact analyses, environmental assessments, and other supporting documentation; and (3) propose a critical habitat designation.

One commenter questioned why, in the draft Recovery Plan, buffer areas around rookeries and haulout sites were not considered. The commenter made reference to a 30-mile no fishing zone that has been established around Steller sea lion rookeries in the Kuril Islands and suggested that the important, large rookeries (in Alaska) should have buffers considerably larger than the 3-

nautical mile (nm) zone established in the listing regulations. Another commenter also recommended that the buffer zones be increased significantly as it has been well documented that Steller sea lions move considerable distances beyond 3-miles from the rookeries.

Response: The Recovery Team recommended to NMFS terrestrial and aquatic areas which they believed should be considered as critical habitat for the Steller sea lion. These areas included all rookeries, major haulout sites, and important feeding areas identified in Sections 111, 112, and 113 of the draft Recovery Plan. The Recovery Team further indicated that when areas are designated they should be large enough to ensure that potential impacts can be controlled and minimized, and that seasonal-use patterns by Steller sea lions (Section 12) should, if applicable, be documented when critical habitat designation is made. NMFS is reviewing the recommendations of the Recovery Team and is developing a proposed rule to designate critical habitat for Steller sea lions.

Disturbance at Rookeries and Haulout Sites and Intentional Takes

Several commenters stated that disturbances of animals at rookeries and on haulouts must be diminished, including restricting water and air traffic. Several commenters also stated that intentional takes must cease. Shooting at or near Steller sea lions must be stopped.

Response: Information on the possible effects of disturbance caused by human activities was summarized in the draft Recovery Plan. The draft Recovery Plan suggested that information about the causes and impacts on sea lions of disturbance caused by human activities (e.g., noise from aircraft, boats, or other vehicles; shooting; habitat alterations; etc.) should be archived and summarized, and an effort made to document the response of sea lions to disturbance in areas where such observations can be made (e.g., at rookeries in California and Oregon). Instances of disturbance should also be recorded by observers who are now in place on commercial fishing vessels.

The draft Recovery Plan also suggested that (1) regulations and guidelines should be developed and/or revised to minimize potential impacts of human activities, and that buffer zones may be the best way to limit disturbance around rookeries and major haulouts; (2) major feeding areas at sea need to be protected from human disturbance through the prohibition or control of

certain activities (e.g., shooting); and (3) specific guidelines or regulations should address disturbance that may be caused by vessels (commercial and sport fishing, tourist, research, and recreational), aircraft (private, charter, and military), and activity on the ground (tourists, researchers, motorized vehicles, and industrial activities).

Several of these issues were addressed at the time the species was listed as threatened. The discharge of firearms was prohibited within 100 yards (91.4 meters) of a Steller sea lion; and (2) no-entry buffer zones of 3 nautical miles (5.5 kilometers) were established around the principal Steller sea lion rookeries in the GOA and BSAI specifically to reduce disturbance and possible intentional takes at those sites. No vessels are allowed to operate within the buffer zones, with exceptions outlined in the final rule (FR 55 49209, Nov. 26, 1990).

NMFS continues to monitor and limit disturbances around Steller sea lion rookeries and haulouts, and the possible impacts of commercial fishery activities through the ESA section 7 consultation review process, and the review process associated with obtaining permits to conduct research, or to approach Steller sea lion rookeries at a distance less than that specified at the time of listing.

Prey Requirements of Steller Sea Lions and Commercial Fisheries

The draft Recovery Plan recognized that commercial fisheries may remove millions of metric tons of main prey species of the Steller sea lion. It further suggests that this may cause nutritional stress due to large-scale changes in food abundance, localized prey depletion, and disrupting fish behavior causing the Steller sea lion to expend more energy to obtain food (page 26, draft Recovery Plan). The draft Recovery Plan recognized that if a fishery is having a detrimental effect on prey availability, then regulation of the fishery will be necessary.

In light of this, one commenter suggested that the handling of this issue in the draft Recovery Plan was inadequate, and that the final Recovery Plan should suggest stronger measures to limit fishing in critical areas to ensure adequate prey availability. Another commenter suggested that in order to require sufficient quality of food at all times, fishing should be restricted using quotas and time/area closures to see if this speeds [sea lion] recovery. Several comments discussed the need for reviewing data on commercial fishing activities in Steller sea lion feeding areas, and another recommended establishing procedures to evaluate

whether fisheries compete for Steller sea lion prey, including listing explicit criteria for determining when a fishery becomes a limiting factor.

Response: Although the data available on abundance of Steller sea lions, and changes that have occurred over time, are not as comprehensive as is desirable, it is certain that a major population decline has occurred. Both natural and human-caused factors have been hypothesized as contributing to these declines. The Recovery Team recognized that for the Steller sea lion population to grow (i.e., recover) measures must be taken to ensure that food availability is not limiting. A large combined biomass of assorted prey species does not necessarily indicate an adequate food supply, since some of the species may be nutritionally poor at times or energetically costly to catch. The draft Recovery Plan stated that if a fishery is having detrimental effects on prey availability, either through removals of target species or bycatch, additional regulation of the fishery may be necessary. In some instances it may be possible to reduce competition between commercial fisheries and sea lions by changing fishing areas, seasons, time of day, and types of operations. Where alterations in operations can reduce competition, the Recovery Team recommended that appropriate changes should be initiated and the sea lions monitored for responses (see Section 621). Quotas for catches should be set on a regional and seasonal basis for each stock of each prey species identified as important (Section 614).

Since the final listing, NMFS has developed under the MFCMA additional fishery management regulations to further reduce the potential adverse effects of the walleye pollock fishery on Steller sea lions. By emergency rule (56 FR 28112, June 19, 1991), NMFS established restrictions to ensure that the 1991 GOA walleye pollock fishery would not jeopardize the continued existence or recovery of Steller sea lions. Concurrent with specification of the 1991 GOA walleye pollock harvest levels, NMFS (a) prohibited groundfish trawling within 10 nm of 14 GOA and 4 BSAI Steller sea lion rookeries (rookeries are listed at 56 FR 28116, June 19, 1991); (b) spatially allocated the walleye pollock harvest to divert fishing effort away from sea lion foraging areas; and (c) placed further restrictions on the amount of walleye pollock that could be harvested in any quarter of the year. On November 18, 1991, NMFS issued a proposed rule to make the above emergency fishery management measures permanent (56 FR 58214). The final rule was issued on

January 23, 1992 (57 FR 2683) and expanded the proposed rule to (1) prohibit trawling year-round within 10 nm of 37 rookeries in the GOA and BSAI; and (2) expand the 10 nm buffer zone around five of the rookeries (Akutan Island, Akun Island, Sea Lion Rocks, Segum Island, and Adligadak Island) to 20 nm from January 1 through April 15 of each year. These closures are intended to further reduce any effects that groundfish trawling may have on the Steller sea lions, particularly to their foraging success.

NMFS will continue to research the condition and required foraging range of Steller sea lions through research activities specified in the Recovery Plan. If certain age/sex classes of sea lions are found to be especially food limited, then special efforts should be made to regulate total allowable catches in their feeding areas. Where prey abundance is low, or where the sea lions show signs of nutritional stress, prey availability must be increased, if possible. NMFS recognizes that the types of prey available and the energetic cost of obtaining the prey should be acceptable at required times in all critical feeding areas.

Education

One commenter emphasized the need for public education and awareness. They continued by stating that an aggressive campaign of producing posters illustrating identifying features and closely related species [i.e. California sea lions] and bulletins identifying the minimal impact by Steller sea lions on selected commercially valuable species are just some of the education related activities that are of great importance.

Response: Steller sea lion public information/education efforts to date have included mass mailings, press releases, and public presentations of ongoing research and management activities at Fishery Management Council meetings and at symposia and public hearings in affected communities. Mass mailings to vessel operators, other affected parties, and government agencies that included a description of the regulations and maps depicting buffer zones have accompanied each rulemaking. A public information poster was developed and placed in strategic locations throughout Alaska.

NMFS held a meeting of the Recovery Team in November 1992 and appropriate directions for the information and education program objectives specified in the Recovery Plan were discussed. The Recovery Team recommended that (a) an Alaska

Department of Fish and Game (ADFG) video on the Steller sea lion be distributed to Marine Advisory Program offices; (b) NMFS-funded subsistence studies be used as a possible education avenue to Alaska coastal communities; (c) a Steller sea lion brochure be developed for distribution at government and tourist facilities; (d) a Steller sea lion newsletter and other marine mammal issues be developed; and (e) greater emphasis on the rationale behind management actions taken need to be included in information packages to affected parties. NMFS recognizes the need and importance of these information and education programs. NMFS, ADFG and Alaska Sea Grant have agreed to work cooperatively on the implementation of these actions.

Recovery Plan Summary

The stated goal of the Recovery Team was to develop a Steller Sea Lion Recovery Plan which would promote recovery of the Steller sea lion population to a level appropriate to justify its removal from ESA listings. Immediate objectives of the Recovery Plan were to identify factors that limit the population, to propose a set of actions that minimize any human-induced activities considered detrimental to the survival or recovery of the population, and actions necessary to cause the population to increase. The Recovery Team recognized that, although it is not clear what factors have contributed to the Steller sea lion population decline and that a great deal of information vital to the effective management of the species is lacking, there was an urgent need to take immediate actions to safeguard against further population declines, and to provide for recovery of the species. The Recovery Team recommended that immediate actions should be taken to reduce human-caused mortality to the lowest level practicable, to protect important habitats through buffer zones and other means, and enhance population productivity by ensuring that there is an ample food supply available. Conservation and management measures implemented when Steller sea lions were listed under the ESA, and since, have addressed some of these needs. Additional management actions are described in the final Steller Sea Lion Recovery Plan. The final Steller Sea Lion Recovery Plan has been approved by NMFS and is available upon request. The Recovery Plan was prepared by the Recovery Team but does not necessarily represent official positions nor approvals of all the Recovery Team members, or cooperating agencies, other than NMFS, involved in

the plan formulation. The final Recovery Plan represents the official position of NMFS only after it has been signed by the Assistant Administrator for Fisheries as approved. The approved Recovery Plan is still subject to modification as dictated by new findings, changes in species status and completion of tasks described in the plan. Goals and objectives will be attained and funds expended contingent upon agency appropriations and priorities.

References

References in this notice can be found in the Steller Sea Lion Recovery Plan, or provided upon request.

Dated: December 29, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

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BILLING CODE 3510-22-M

Atlantic Mackerel, Loligo and Illex Squid, and Butterfish Under U.S. Jurisdiction, Excluding the Gulf of Mexico and Caribbean Sea

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and request for scoping comments.

SUMMARY: NOAA announces its intention to prepare, in cooperation with the Mid-Atlantic Fishery Management Council (Council), an SEIS pursuant to the National Environmental Policy Act, to assess effects of any changes to the management regime of Atlantic mackerel (*Scomber scombrus*), two squid species, *Loligo pealei* and *Illex illecebrosus*, and butterfish (*Peprilus triacanthus*) pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended (MFCMA). The Council is considering amending the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) by developing appropriate management measures to be contained in Amendment 5. The SEIS will analyze the potential impacts of any proposed new measures in the amendment, and the fishery, itself, on the human environment. If such an amendment to the FMP is approved by the Secretary of Commerce (Secretary), implementation of such action is expected no sooner than 1994.

In addition, the Council announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to revising management of

Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Scoping comments are invited until January 7, 1993, when the scoping process will end at the conclusion of a scoping meeting that will begin at 1:00 p.m. on January 7, 1993, at the Ramada Inn, 76 Industrial Highway, Essington, PA 19029, (215-521-9600).

FOR FURTHER INFORMATION CONTACT: Mr. John C. Bryson, Room 2115 Federal Building 300 South New Street, Dover, Delaware 19901-6790 (Phone 302-674-2331) (FAX 302-674-5399).

SUPPLEMENTARY INFORMATION:

Problems Discussed for this Amendment

1. Overcapitalization Should be Avoided

The fishery currently has more than sufficient capacity to harvest all the allowable biological catch (ABC) for each species. This FMP was initially designed to encourage U.S. fishermen to harvest underutilized resources. The U.S. fishery may have grown to where there is no need for foreign harvests, and additional investment by U.S. fishermen could only dissipate any profits for existing fishermen who have invested heavily to build this fishery.

2. Additional Management Measures Are Necessary for *Loligo* and *Illex*

Both of these fisheries have become completely Americanized. No foreign harvests of either of these species of squid have occurred since 1987. Domestic harvests for both species are approaching the maximum sustainable yield (MSY) levels. At present, the Regional Director can only close the fishery if the quotas are reached. This management alternative may not be the best solution for the continued smooth and efficient operation of these fisheries.

3. Butterfish Bycatch Discard Mortality May be Inhibiting Sufficient Growth Such That Achievement of Maximum Sustainable Yields is Prevented

Sea sampling data for 1989, 1990, and 1991 indicate that as much butterfish (by weight) is discarded as is landed. This may be a partial explanation for why there have been relatively low levels of butterfish landings over the past several years in light of very favorable stock assessments. The MSY is

16,000 metric tons. However, actual landings have only been around one quarter this level. The lack of availability of butterfish for fishermen was thought to have been the explanation in the past. However, the new sea sampling data indicate that discards may be having a significant impact on the resource.

4. Lack of Data

National standard 2 states that "measures shall be based upon the best scientific information available." Although recreational and commercial catch data have been adequate to formulate and implement management measures, data collection should be improved, in order to allow for better management in the future. An improved data base will allow the Council to more finely tune the management system to the needs of the fishery. These data are necessary to assess the impact and effectiveness of management measures, as well as monitor fishing mortality and increases in stock size to determine if additional amendments to the FMP will be necessary.

5. Mixed-Species Fishery

The Mid-Atlantic mixed-species fishery relies principally on summer flounder, scup, black sea bass, yellowtail flounder, butterfish and *Loligo*, as either directed or bycatch in other directed fisheries. Many of these species are also components of the southern New England trawl areas. Generally, fishing activities follow these species as they make annual migrations from south to north and from offshore to inshore waters. Many of the species identified above that are in this mixed fishery are overexploited. Directed effort from some of the species has been switched to species managed in this FMP. These factors complicate the identification of appropriate and effective management strategies, thus requiring close coordination of regulatory measures for the different species in order to manage properly this species assemblage.

Possible Management Measures

Part of this scoping is the possible reevaluation of the existing objectives. Current management objectives of the FMP are:

1. Enhance the probability of successful (i.e., the historical average) recruitment to the fisheries.
2. Promote the growth of the U.S. commercial fishery, including the fishery for export.
3. Provide the greatest degree of freedom and flexibility to all harvesters of these resources consistent with the