


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Executive Director

DATE: November 30, 2010

SUBJECT: Steller Sea Lion Biological Opinion

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Receive report on SSL BiOp and take action as necessary.

BACKGROUND

At this meeting, the Council is scheduled to receive a report from NMFS on the Steller Sea Lion Biological Opinion and the final Reasonable and Prudent Alternative (RPA). The draft Biological Opinion (BiOp) was released by NMFS on August 2, 2010, and concluded that the status quo BSAI and GOA groundfish fisheries jeopardize the continued existence of the endangered western Distinct Population Segment (DPS) of Steller sea lions and adversely modify its designated critical habitat. In the draft BiOp, NMFS outlined an RPA that would close the Atka mackerel and Pacific cod fisheries in the Western Aleutian Islands (Area 543), restrict the Atka mackerel and Pacific cod fisheries in the Central Aleutian Islands (Area 542), and restrict the Pacific cod fishery in the Eastern Aleutian Islands (Area 541).

At the August 2010 meeting, the Council unanimously passed a motion recommending that NMFS consider another RPA with less restrictive fishery closures in the Aleutian Islands. The Council also recommended a 2-year sunset provision for the mitigation measures, which would give the Council the opportunity to recommend an alternative set of management measures that would take effect in two years. NMFS accepted public comments on the draft BiOp until September 3, 2010, and considered comments provided by the Council and the public in determining whether changes could be made to the draft RPA that are consistent with the principles and objectives of the draft BiOp.

In October, NMFS presented a revised RPA to the Council that incorporates four changes to the RPA presented in the August 2010 draft BiOp:

- Permit non-trawl vessels < 60' length to fish for Pacific cod from 6- 10 nm in critical habitat year-round in Area 542.
- Permit non-trawl vessels ≥ 60' length to fish for Pacific cod from 6- 10 nm in critical habitat in the B season in Area 542.
- Permit trawl vessels to fish for Pacific cod from 10-20 nm of critical habitat from 178° W to 177° W in the A season.
- Permit trawl vessels participating in a harvest cooperative or fishing CDQ to fish for Atka mackerel from 10-20 nm of critical habitat from 179° W to 178° W year-round. Limit the

amount of Atka mackerel harvest inside critical habitat to 10% of the entity's annual allocation. Divide the annual harvest inside critical habitat evenly between the A and B seasons.

NMFS is scheduled to present the final RPA and final rule to the Council at this meeting. NMFS will implement the mitigation measures as a Secretary of Commerce action under Section 305(d) of the Magnuson-Stevens Act, and the measures will go into effect in January 2011. Although the Council requested a two-year sunset provision for the new measures, we have not yet received the final rule (as of 12/1/10) and do not know if this provision will be part of the final rule, although NMFS has indicated that inclusion of the 2 year sunset is unlikely. In either case, the Council could have preliminary discussions of the potential development of alternative management measures.

In addition, the Council could discuss the timing of an independent scientific review of the BiOp by the Center for Independent Experts (CIE) and other possible peer review processes. NMFS has indicated that a CIE review will be conducted during the CIE's 2011 review cycle unless the Council requests a different review process. The CIE Terms of Reference were provided to the Council in January 2010, and the Council provided NMFS with comments on the Terms of Reference in a February 2010 letter (attached as Item C-1(a)). NMFS indicated that the CIE Terms of Reference provided to the Council in January 2010 have not yet been modified, due to changes in the BiOp schedule that occurred in March 2010. One of the issues the Council was scheduled to discuss at this meeting was whether it supported a CIE Review (versus, for example, some other review process). Without a revised Terms of Reference, it will be difficult for the Council to make such a determination. The Council may wish to review its February 2010 comments at this meeting, and could provide NMFS with an updated set of comments on the CIE Terms of Reference and revisit this issue at a future meeting.

Item C-1(b) is a copy of the letter the Council sent to NOAA in October regarding a potential review of the SSL research program. The Council has conducted several other types of independent reviews in the past, and could consider other peer review processes in addition to, or instead of, the CIE review. A summary of these past reviews, including the scope of work, timeline, cost, and source of funding, is attached as Item C-1(c). Two independent reviews of the 2000 Steller Sea Lion Biological Opinion were conducted during 2001-2002. A comprehensive review of the 2000 BiOp and the Steller sea lion research program was conducted by the National Research Council, and was funded through a Congressional appropriation. This 19-month review examined the status of knowledge about the decline of SSLs in the North Pacific, reviewed hypotheses for the decline, identified important information gaps, and outlined the components of an effective SSL research and monitoring program. In addition, a short-term review (6-7 months) that was more limited in scope was commissioned by the Council (the 'Blue Jean Review'). This review focused on the science associated with the BiOp and RPAs, and the reviewers acted in an advisory capacity to the Council's RPA committee. In 2002, the Council commissioned an independent review of the F40 harvest policy to determine if this approach was sufficiently conservative and consistent with the National Standards. This was also a short-term review process (5-6 months).

At the October meeting, the Council passed a motion recommending that a high level scientific institution, such as the National Research Council, conduct a programmatic review of NMFS's Steller sea lion research program. The review would evaluate the effectiveness of the research program, identify remaining data gaps, and make recommendations for a re-focused SSL research program to address pressing scientific and management needs. The Council requested that the Executive Director, working with the Council Chair, explore options for securing such a comprehensive programmatic review of the SSL research program.

The process of conducting a review of a research program has been discussed with the National Research Council (NRC), and we have been informed that the process is relatively straight forward and can be accomplished quickly. The first step is to identify sponsors and to work with the NRC to craft a work statement. In developing a work statement, the NRC's priority is ensuring that the review will be of

value to the community of interest. Once a draft work statement is complete, it is submitted for review by the NRC's governing board to ensure that the work statement addresses an issue of scientific significance, and that the work plan and budget are appropriate for the scope of the review.

Reviews may be sponsored by a single agency, or a consortium of state and federal agencies, institutions, and industry. However, in most cases, the NRC requires that no more than 50% of the funding come from industry. The size of the budget depends on the scope of the review. A typical review of a major research plan with a single report may cost \$350,000-\$450,000. The NRC needs the sponsors to commit at least 70% of the funding before the review can be started.

The timeline for conducting an NRC review depends on the scope of the study. The initial steps of drafting a work statement, identifying sponsors, and securing funding can take as little as 2 weeks, but are often more time consuming. Once these steps are completed, it usually takes about 8-10 weeks to complete the committee nomination process and schedule the first meeting. A focused review can be completed in about 6 months from the receipt of funding, and a more in-depth study could take 1 to 2 years. An average study takes about 15 months from receipt of funding to delivery of the final report. Some examples of NRC study work statements are attached as Item C-1(d).