



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Action Memo

File Number:REP 14-028

Agenda Date2/3/2014

Agenda Number:B-7

Eric Olson, Chairman
Chris Oliver, Executive Director

SUBJECT:
Protected Species Report

BACKGROUND

SSL Mitigation Measures EIS:

On January 10, 2014 the National Marine Fisheries Service submitted two motions to the U.S. District Court for Alaska: (1) to allow a short-term extension of the publication of the availability of the required Final EIS from March 2, 2014 to March 17, 2014, and (2) to extend by five months the deadline established for the publication of the Steller sea lion mitigation measures EIS and the issuance of a new final rule to revise Steller sea lion protection measures for the Bering Sea and Aleutian Islands management area. NMFS requested that the deadline for notice of availability of the final EIS be extended to August 15, 2014, and that the deadline for implementation of any new protection measures be extended to the earlier of December 31, 2015, or a date that would provide sufficient time to implement new measures for the 2016 fishing season. On January 29, 2014 the U.S. District Court allowed the short-term extension to April 7 to accommodate full briefing of the motion to extend the publication of the Final EIS to August 15.

If the Court grants an extension to August 15, 2014, NMFS will prepare and release a draft Biological Opinion near the end of February, 2014. If the draft BiOp concludes that the Council's Preferred Alternative is not sufficient to ensure that the action is not likely to result in Jeopardy to the Western DPS of Steller sea lions or adversely modify its critical habitat (Jeopardy or Adverse Modification: JAM), a Reasonable and Prudent Alternative (RPA) would be required. The Council would then have the opportunity to work with the Agency to draft a RPA, through the Steller Sea Lion Mitigation Committee or other mechanism. The RPA would be presented to the Council at the April, 2014 meeting in Anchorage, the EIS would be completed by August 15, 2014, and rulemaking completed in sufficient time for implementation by January 1, 2016.

If the draft BiOp concludes that the Council's Preferred Alternative does ensure that the action is not likely to result in JAM, a RPA would not be necessary. The agency would, then, finalize the EIS by April 7, 2014, and complete rulemaking to implement measures by January 1, 2015.

If the Court does not grant the five month extension, regardless of the findings of the BiOp, the EIS will be completed by April 7, 2014 and rulemaking completed by January 1, 2015. If the BiOp concludes that the Council's Preferred Alternative is not sufficient to ensure the proposed action would not result in JAM, the Agency will develop a RPA and associated fishery management measures without Council or stakeholder input and proceed with rulemaking to implement measures by January 1, 2015.

New management measures will be in place by January 1, 2016 *if*:

- the Court grants an extension *and* the draft BiOp concludes JAM.

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New management measures will be in place by January 1, 2015 *if*:

- the Court refuses to grant the extension regardless of whether the BiOp concludes JAM or no JAM
- the Court grants and extension and the draft BiOp concludes no JAM.

Steller Sea Lion Critical Habitat:

The National Marine Fisheries Service released the final rule to delist the Eastern DPS of Steller sea lions under the U.S. ESA on November 4, 2013 (78 FR, 66140: November 4, 2013). In that Federal Register notice, NMFS responded to comments on the proposed rule, including comment 64 from the State of Alaska noting that NMFS should indicate that delisting of the eDPS of SSL removes the critical habitat designation for the eastern DPS. In their response, NMFS stated their opinion that “critical habitat does not lose its biological and conservation relevance to the still-listed species simply because the species listing is amended”, and that “we construe the ESA to provide in these circumstances for keeping existing critical habitat designation in place... until the designation is amended through a further rulemaking.”

Critical habitat for Steller sea lions was established in 1993 (58FR 45269: August 27, 1993). In that final rule, both terrestrial and marine critical habitat was established, before the official determination that the population was divided into the eastern and western Distinct Population Segments (DPS). Therefore, critical habitat was established for the population as a whole, rather than for the eastern or western DPS individually. NMFS stated that this approach is consistent with critical habitat designated for northern right whales in 1994 that remained in place following the 2008 division of the listing into two separate species. However, both of those species remain listed on the ESA.

NMFS also noted in the final rule delisting the eDPS that they will undertake a separate rulemaking to consider amendment to the existing critical habitat designation for Steller sea lions that takes into account any new and pertinent sources of information since the 1993 designation, including amending the designation as appropriate to reflect the delisting of the eDPS. At the recent Steller sea lion research coordination meeting held on Friday, January 24, 2014, NMFS staff noted that they intend to begin this assessment in early 2014.

Marine Mammal Stock Assessment Reports:

The 2013 DRAFT Alaska Marine Mammal Stock Assessment Reports (SAR) were published on November 6, 2013. NMFS is accepting comment on the DRAFT SAR until February 4, 2014. The Alaska DRAFT SAR is available at <http://www.nmfs.noaa.gov/pr/sars/draft.htm>

List of Fisheries:

NMFS published the 2014 proposed List of Fisheries on December 6, 2013. The comment period ended on January 6, 2014. The list is available at www.nmfs.noaa.gov/pr/interactions/lof/