

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *Chris*
Executive Director
DATE: March 30, 2010
SUBJECT: Update on SSL Biological Opinion

ESTIMATED TIME
2 HOURS

ACTION REQUIRED

Discuss revised schedule for release of the draft Biological Opinion.

BACKGROUND

At the April meeting, NMFS will provide the Council with an update on the schedule for releasing the draft SSL Biological Opinion. The release of the Biological Opinion was postponed from the scheduled March 1, 2010 release date. At this point, NMFS has indicated that a discussion on schedules for the preparation of analytical documents and rulemaking to implement any necessary changes to the fisheries might best be delayed until after the draft BiOp is released, when the nature and scope of possible analyses and rulemaking can be better assessed.

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



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February 19, 2010

Mr. Douglas Mecum
Acting Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Mecum:

At its February 2010 meeting, the North Pacific Fishery Management Council received briefings on the schedule for the upcoming draft *status quo* Biological Opinion (BiOp) and a report from its Steller Sea Lion Mitigation Committee (Committee). We also reviewed NMFS' response to our previous request for input on the Center for Independent Experts' (CIE) terms of reference for their pending review of the draft BiOp. Based on discussions during that February meeting, the Council expressed some overarching perspectives that we believe are critical to the Council's potential involvement in development of RPAs for the 2011 fishing year, depending on the findings in the draft BiOp; i.e., if the BiOp contains a jeopardy and/or adverse modification (JAM) determination.

The Council tasked its Committee with reviewing the draft Biological Opinion at its March 9-12, 2010 meeting in Juneau. The Committee will provide comments on the BiOp to the Council at its April 2010 meeting, which may inform the Council's development of comments on the draft BiOp to NMFS. Further, the Committee is tasked with commenting on the feasibility of the Council developing appropriate SSL mitigation measures (RPAs) given the content and findings of the draft BiOp. Key to this feasibility is the level of definition of any performance standards included in the draft BiOp. If the performance measures are overly prescriptive, it will not be useful to engage the Committee and Council process in the development of potential RPAs. Conversely, any performance measures will need to provide the Council and its Committee enough definition of problem areas to allow us to craft responsive management actions. It is the Council's intent, upon consideration of the Committee comments and recommendations, to decide whether or how to further engage the Committee and the Council process in the development of potential SSL mitigation measures for the 2011 fishing year.

The Council also requests that NMFS prepare a concise white paper that would be made available concurrently with the draft BiOp, which would clearly describe the methodology NMFS is using to determine the current status (total count) of Western Distinct Population Segment (DPS) SSLs relative to the downlisting criteria in the Final Steller Sea Lion Recovery Plan, including:

- The specific methodology used in the Recovery Plan to determine the 42,500 animal baseline found in downlisting criterion 1 (Recovery Plan, p. xiii).

- The specific methodology used to establish the 53,100 animal target set for 2015, described in downlisting criterion 1.
- A clear determination of the current status of the WDPS as gauged against these criteria by applying the specific methodology used to calculate the 42,500 animal baseline.

If this information is clearly discernable in the draft BiOp, a separate white paper may not be necessary. However, the Council believes this information is critical to framing the information and findings in the draft BiOp.

Finally, the Council wishes to express its appreciation for the opportunity to comment on the Center for Independent Experts (CIE) Statement of Work (SOW) and Terms of Reference (TOR). The Council's SSC also provided comments on the SOW and TOR for consideration by the Council. The SSC's comments are incorporated as appropriate in the Council's comments provided here. The Council offers the following comments to improve the CIE process by focusing the review more on the science and its interpretation, and by enhancing the transparency of the review:

- a) The Council reiterates its request of December 23, 2009 to modify the review schedule to allow the public, SSLMC, SSC, and Council the opportunity to review and comment on the draft BiOp prior to the CIE review. The TOR and SOW should be modified to task the reviewers to consider any such comments in their review of the draft BiOp. The intent is not for separate input to the CIE from the various bodies, but that the Council would be the vehicle to synthesize that input and forward to NMFS and the CIE.
- b) The Council recommends that the TOR and SOW be modified to request the CIE to review and consider all of the science relevant to the analysis of factors affecting the status and recovery of the WDPS, not just the science provided in the draft BiOp to support its conclusions. The CIE reviewers should be tasked to assess, among other things, the information provided to the SSLMC at its January 2010 meeting. This information, including the minutes from the recent SSLMC meeting, should be made available to the reviewers prior to the review. Preparation of a comprehensive bibliography of relevant research may be necessary to fulfill this recommendation.
- c) The Council recommends that the TOR and SOW be modified to specifically task the CIE to review the relevant genetic papers, brand re-sight data, survey counts, and other relevant data on EDPS animals that may be found within the range of the WDPS, and WDPS animals that may be found within the range of the EDPS, and to make a recommendation on how these animals be counted when the agency calculates the WDPS population.
- d) The Council recommends that the TOR and SOW be modified to task the CIE to assess the relationship between population trends and downlisting criteria, and whether there are factors (other than fishing) affecting the recovery of the WDPS, including predation, changes in the ecosystem/carrying capacity, emigration, or other factors that should be taken into account.
- e) The Council concurs with the recommendation of the SSC regarding pre-review documents and further recommends that the background materials provided to the CIE reviewers include the studies and reports provided to the SSLMC at its January 2010 meeting, along with the genetic, brand re-sight data, and other scientific information or studies identified above. The

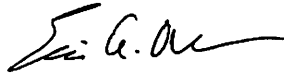
Mr. Doug Mecum
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basic analyses and data should also be provided to the CIE reviewers for studies such as the Fishery Interaction Team (FIT) analysis presented to the SSLMC, not just the Powerpoint presentations. These materials should be provided to the CIE reviewers well before the CIE begins its work in order to provide time for a thorough review.

- f) The Council concurs with the comments by the SSC regarding the requirements for CIE reviewers, pre-review documents, and the SSC's suggestion for revising the second bullet under item 3 in the TOR.
- g) The Council also concurs with the recommendations by the SSC regarding the schedule of milestones and deliverables (although specific dates may need to be adjusted to conform to the schedule), and further recommends that the CIE schedule be modified to provide the CIE reviewers adequate time to perform their reviews. Currently the SOW indicates that the reviewers will have a maximum of 10 days to complete the review.

The Council appreciates the work conducted by NMFS to complete the draft BiOp, and particularly for accommodating our request to comment on the CIE review process. The above information will greatly assist the Council as it reviews the draft BiOp. Moreover, the suggested revisions to the CIE review process, Terms of Reference, and Statement of Work will significantly enhance the transparency and scope of the review process. We believe that accommodation of our requests is critical to the review of the draft BiOp. Please contact me or the Council's Executive Director if you have any questions regarding these requests.

Sincerely,



Eric Olson
Chairman

Cc: Dr. James Balsiger
Dr. Douglas DeMaster
Ms. Kaja Brix



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 22, 2010

Eric Olson
Chair, North Pacific Fishery Management Council
605 W 4th Ave Suite 306
Anchorage, AK 99501-2252

Dear Mr. Olson:

Thank you for your letter requesting additional information from the National Marine Fisheries Service (NMFS) in regard to the upcoming groundfish status quo Biological Opinion (BiOp). We address below the points raised by your letter as you enumerated them (in italics, with responses in regular type).

1. *The Council requested input to the draft Terms of Reference (TOR) for the Center for Independent Experts (CIE) review of the BiOp.* NMFS is attaching the TOR for your review and comment. As you are aware, NMFS intends to have the CIE review the rationale and information used to support the conclusion in the BiOp, but not the conclusion itself.
2. *The Council requested that the BiOp schedule allow for public and Council review prior to the CIE review.* NMFS can accommodate this request by releasing the BiOp to the public and the Council prior to the CIE review. We can charge the CIE with review of the information contained in the BiOp and additional information, recognizing that this format may delay the finalization of the BiOp and implementation of any changes that may need to be made to the fisheries. NMFS is using all of the best available information in the analyses conducted in the BiOp.
3. *Will the Agency be using the downlisting criteria as guidance for the analysis in the consultation?* NMFS will use the Recovery Plan and the downlisting criteria contained within that plan as a general framework for assessing the capacity of the population, and the habitat that supports that population, recover.
4. *The Council asked the Agency to provide the years we will use to measure performance of the current SSL protection measures i.e., are we using the base year of 2000 to measure SSL trends.* The trend in abundance of SSL is based on data collected over approximately 30 years. It is this overall trend that provides indication as to the trajectory of the population. A subset of years may be informative for some purposes but will not be the sole basis by which the population is measured.



5. *With respect to trends in wSSL non-pup abundance, NMFS reported at the Council's February 2009 meeting that the trends across the range were an overall 14% increase over the period 2000 to 2008, or an annual increase of 1.7%. At that time, NMFS posed a hypothesis that the counts in the eastern portion of the wSSL range were inflated due to animals from the eSSL moving west to Kayak Island or other nearby areas. Partial counts were done in the summer 2009, and NMFS is now reporting that the overall increase in the wSSL population may be around 12% or a 1.4% annual rate of increase. NMFS further reported that genetics or tagging work is needed to confirm the hypothesis. Since the 1.4% number is linked to a hypothesis, will the 1.7% increase measured last year be used in the BiOp?*

The results of the summer 2009 non-pup survey in the northern Gulf of Alaska supported the hypothesis that there was an early summer movement of sea lions between SE Alaska (eastern stock) and the Prince William Sound area (western stock) in 2008 that affected trend analyses in both stocks. The analysis used in the new Biological Opinion will use the most up to date information available. The trend will be calculated through 2008, but will use the information obtained in 2009 on seasonal movements between stocks that resulted in the 12% overall increase between 2000 and 2008. However, it should be noted that both of the estimated annual rates of population change between 2000 and 2008 (1.4% per year using the 2009 information to adjust the 2008 counts, and 1.7% per year using the unadjusted 2008 data) are not significantly different from 0 and as such do not meet the recovery criteria noted in the 2008 Steller Sea Lion Recovery Plan.

Also, how will the wSSL animals (as determined by genetics and brand/resight data) found in the eSSL region be accounted for in wSSL trends used in the BiOp? For example, there are two rookeries (Graves and White Sisters) in the eSSL range where genetic samples and observations of branded animals indicate that 60% and 40%, respectively, of these animals and their pups are of wSSL origin. Are these females and their pups accounted for in the 1.7% annual rate of increase for pups and non-pups in the wSSL population?

NMFS will determine SSL stock trends based on counts of pups and non-pups on terrestrial sites during the breeding season within the designated ranges of the eastern and western stocks (E and W of 144°W, respectively), as modified by any information on seasonal movement across stock boundaries. The survey counts report the number of Steller sea lions (pups and non-pups) counted in aerial photos taken of particular rookeries and haulouts. The rookeries and haulouts are grouped by region and ultimately by stock. The genetic makeup of the animals at the time they are photographed is unknown and has never been included in these counts.

6. The 2008 SSL Recovery Plan reported the total U.S. non-pup wSSL population at 42,500 animals. How was this calculated considering the issues described in No. 5 above? What would this total U.S. non-pup wSSL population number be today if calculated using this methodology.

The number reported in the 2008 SSL Recovery Plan is 45,000. This is an estimate of the total western Steller sea lion population (pup and non-pup) in Alaska in 2005. It was based on the number of pups counted in aerial photographs in 2005 (9,950) multiplied by 4.5 (rounded to the nearest 1000). Using the 2009 pup production estimate (11,120) and the same methodology, the total western SSL population in Alaska is estimated to be 50,000 in 2009. The issues described in No. 5 do not affect these total population estimates because they are based on pup counts not non-pup counts, which are the subject of No. 5. The 4.5 multiplier on pup production comes from a life table of a stable equilibrium Steller sea lion population derived by Calkins and Pitcher (1982). It is the total number of sea lions (pups and non-pups) divided by the number of pups. Any pup multiplier based on a life table is only valid for use in estimating total population size if the underlying vital rates (survival and natality) that form the basis of the life table are known. In the case of the western SSL population in AK, the vital rates within each region are not known. It is for this reason that NMFS determines wSSL status by monitoring trends in pups and non-pups at key sites across the range rather than by estimating changes in total population size.

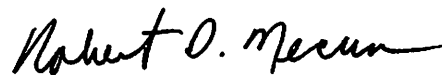
- 7. The Council requested the fishery catch data as used in the BiOp. Those tables are available and will be provided to the Council electronically with submission of this letter. NMFS began to look at these catch data in response to the Council's request to reinitiate consultation on the federal groundfish fisheries.*
- 8. NMFS reported on its plans for future SSL survey and other research. It appears that NMFS is planning to devote the majority of its resources to continued investigations in the Northern Gulf of Alaska including branding and genetics work. The Council requests that, instead of continuing to focus on this region, that emphasis be placed on filling the gaps in the western and central Aleutian Islands where surveys have not been completed in several years. In addition, SSL natality studies in areas such as the eastern Aleutian Islands would be useful; these data could be used to compare natality rates with other areas of the wSSL in an attempt to better understand the dynamics of pup production and survival.*

NMFS agrees that the Western and Central Aleutian Islands require the most attention as they are the areas showing the greatest and most rapid population declines. NMFS will continue to conduct annual aerial surveys of the entire western stock including the areas in question. The inability to complete these surveys in these areas in recent years has not been due to research focus. Rather, logistical difficulties such as weather delays, mechanical breakdowns,

and most recently the closure of the Shemya airstrip have limited the survey extent.

NMFS is continuing to study vital rates, including natality, of Steller sea lions in the eastern Aleutian Islands (as well as in the central and eastern Gulf of Alaska) as part of a brand-resighting program. Permanent marking of pups was reinitiated in the western stock in 2000 in the central Gulf of Alaska, and in 2001 in the eastern Aleutians and eastern Gulf. Therefore, the oldest marked sea lion currently alive in the eastern Aleutians is only 8 years old. Female Steller sea lions can become sexually mature at 3 years old (at the earliest) and first give birth at age 4, but only a small fraction (<10%) develop this quickly. Prime breeding ages for Steller sea lion females occur between 6 and 20 years old. Consequently, any study of sea lion natality rates in the western stock has just begun, since marked females are just now entering their prime breeding ages. NMFS has not had the opportunity to capture adult females for study over the last several years because of permitting issues, but is now actively developing new capture and analytic methods to directly measure female sea lion condition and reproductive status. NMFS hopes to test these techniques during the next several field seasons within the range of the wSSL. However, it is not expected that these new methods and capture techniques will provide significant new information for at least the next several years due to limited sample sizes. It is for this reason that continued study of the large number of permanently marked animals is critical.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Attachments:
TOR for CIE review
Fishery Catch Tables- electronically

cc: Jim Balsiger
Sam Rauch
Jim Balsiger
Kaja Brix
Sue Salveson
John Lepore

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-1 SSL B.O.p

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Jon Warranduk	Ocean
2	Dave Benton	MCA
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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.