

North Pacific Fishery Management Council

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1 August, 2012

To: Dr. Don Bowen, Dr. Brent Stewart, Dr. Kevin Stokes

From: Chris Oliver
Executive Director

Subject: North Pacific Fishery Management Council comments to the CIE review panel for the 2010 BSAI Groundfish Fishery Biological Opinion

Drs. Bowen, Stewart, and Stokes and Chairman Fluharty,

On behalf of the North Pacific Fishery management Council, thank you for coming to hear the concerns of stakeholders in the Bering Sea and Aleutian Islands fisheries, and for considering those concerns as you review the 2010 Biological Opinion on the effects of the BSAI Groundfish Fisheries on the western DPS of Steller sea lions.

My name is Steve MacLean, I am the Protected Resources Coordinator for the North Pacific Fishery Management Council. I am here today to present to you the concerns that the North Pacific Fishery Management Council has related to the development, review, and implementation of the 2010 Biological Opinion, the Reasonable and Prudent Alternative developed with the BiOp, and the Interim Final Rule that established extensive fishery closures in the western and central Aleutian Islands. These comments reflect numerous Council discussions on this issue, and have been reviewed and approved by the Council Executive Director, Mr. Chris Oliver. Chris regrets that he is not able to attend this meeting today.

The North Pacific Fishery Management Council has been involved in the development of this Biological Opinion, since it was initiated in 2006, and has been involved in all previous actions to protect Steller sea lions and their critical habitat in the Bering Sea and Aleutian Islands. The Council's Steller Sea Lion Mitigation Committee was reconvened and met in February 2006 to track the formal consultation and develop alternatives for management in the BSAI groundfish fisheries. As it became increasingly clear that the Biological Opinion was not going to be completed in any predictable timeframe, and the opportunities to propose alternative management measures disappeared, that SSLMC ceased activity. When the draft Biological Opinion was released to the Council in 2010, there was not sufficient time for the Committee to provide input, instead the Council held a special, off-schedule Council meeting in August 2010, to review the Biological Opinion and craft an alternative Reasonable and Prudent Alternative for NMFS to consider. Ultimately, the Council's alternative RPA was rejected, although some changes were made to the agency's RPA for the final BiOp and Interim Final Rule. The Interim

Final Rule was put into effect on January 1, 2011. Throughout this process, the Council repeatedly requested that the agency extend the review period for both the draft and final BiOp to allow the SSLMC and the Council to review and comment on the BiOp. Unfortunately, the truncated review and comment period did not allow sufficient time for meaningful input from the SSLMC or the Council in the development of the BiOp and the RPA. The Council is pleased that NMFS has contracted Center for Independent Experts to review this Biological Opinion, including this opportunity for new information to be presented, and a further review of the BiOp taking that new information into account. The Council hopes that you will consider all of the information you hear during these two days as you develop Chapter 2 of your report.

As the BiOp progressed, the Council's Scientific and Statistical Committee reviewed drafts of the document and commented on the process, data, analysis, and conclusions. You have already received those comments as part of your initial review of the Biological Opinion. The Council does not feel it is necessary to repeat the comments prepared for earlier drafts of the Biological Opinion at this time. Rather, I will concentrate on the comments from the Council, and the Council's Scientific and Statistical Committee regarding the review of the draft presented to the Council at the August 2010 Special Council meeting, and the final Biological Opinion.

In August 2010, NMFS presented the draft Biological Opinion to the Council and the Council's SSC at a special, off schedule meeting of the Council. The SSC was tasked by the Council to review the draft Biological Opinion, and provide comment on the use of the best scientific evidence, appropriateness of the analysis, and the performance standards of the RPA. Those comments are detailed in the SSC minutes from the August meeting, and were provided to the agency. In summary, the SSC found the draft Biological Opinion greatly improved from earlier drafts, but still found cause for concern for some of the sections of the Biological Opinion, RIR, and EA. The SSC was concerned that in the chapter assessing the effects of the action, the agency analysts concluded that "the conservation measures implemented in the 2000s have had a positive impact on reducing the impacts of the fishery exploitation strategy on Steller sea lions". The SSC was particularly concerned that the BiOp authors used an analysis that became known as the "footprint analysis" to arrive at that conclusion, despite concerns raised by the SSC in previous drafts of the analysis. Specifically, the SSC believed

"that the available data, particularly for patchily distributed Atka mackerel, do not support apportionments at the scale of the RCAs. The apportionment of Atka mackerel surveys did not include years that had 'unrealistic' biomass estimates but linearly interpolated between survey years, thereby creating artificial data with unknown accuracy".

The interpolated data were used to calculate harvest rates, which were then averaged across decades. The statistical properties of these average rates are not known, and are likely overstated. If the effectiveness of the conservation measures put in place in the 2000s was overstated, but was used to justify expansion of conservation measures, the Council believes the problems created are twofold. First, the expectation of Steller sea lion recovery, as a result of conservation measures, is artificially high. Second, should the population of Steller sea lions in the affected area fail to recover, whether related to fisheries management strategies or not, the potentially ineffective restrictions in the Aleutians would remain, continuing unnecessary harm to Alaska's fisheries, and unnecessary economic harm to the communities and people of the

Aleutian Islands. The Council requests, as you develop Chapter 2 of your report that you consider whether the linkage between the conservation measures put into place in the Aleutian Islands and the expectation of recovery of the Steller sea lion population in the Aleutians is sufficiently supported.

The Council also remains troubled by the tenuous nature of the link between commercial fisheries activities, hypothesized nutritional stress, and modeled reduction in reproduction (reduced natality determined from a single model in the GOA) in the wDPS upon which the Jeopardy and Adverse Modification (JAM) finding was fundamentally based. In a December, 23, 2010 letter to Dr. James Balsiger, NOAA Regional Administrator in Alaska, the Council noted that

A fundamental flaw with the current BiOp is the disconnect between the concerns it expresses over the adequacy of the prey field in the Aleutian Islands and the 2010 biomass surveys of the three key Steller sea lion prey species (walleye pollock, Pacific cod, and Atka mackerel). We are very concerned that the management measures in the final RPA are not consistent with the most recent biomass estimates, which indicate a level as desired in the BiOp itself, and that the 2010 Aleutian Islands biomass trawl surveys were not considered in the BiOp and RPA analysis [although] the survey was available before the final BiOp was signed.

If biomass of prey items for Steller sea lions has reached a level that is desired by the agency to support the survival and recovery of the wDPS of Steller sea lions, in the absence of restrictive conservation actions, then it would appear that the global scale of restrictions in the RPA may not have been necessary, and a more “surgical” RPA could achieve the same conservation goals, as noted in the SSC minutes from August 2010. The Council respectfully requests that you consider whether the best scientific data supports the agency’s conclusion that commercial fishing activity impacts the Steller sea lion prey field sufficiently to cause nutritional stress in the wDPS, thereby causing a reduction in the birth rate for Steller sea lions as you develop Chapter 2 of your report. The Council also requests that you consider whether new information, particularly regarding the biomass estimates of Atka mackerel in the western Aleutian Islands, would support the SSC recommendation that a more “surgical” and less “global” RPA could achieve the desired conservation results for Steller sea lions.

The North Pacific Fishery Management Council remains engaged in the development of the Environmental Impact Statement currently being prepared to evaluate various alternative Steller sea lion conservation measures in the western and central Aleutian Islands. The Council’s Steller Sea Lion Mitigation Committee is meeting throughout the summer and fall to develop alternatives for consideration in the EIS. Although the SSLMC does not itself develop new data, the committee has drafted comments that it would like you to consider as you develop Chapter 2 of your report. The SSLMC notes that you will receive comments tomorrow from other groups, including industry and environmental groups; accordingly, we will not repeat those comments that you will hear from those groups, although many of their comments are of importance to the SSLMC as well.

- 2010 Atka mackerel biomass estimate was not considered in the BiOp although those data were available before the BiOp was signed. It is noteworthy that the biomass (2010) estimate was already within the range ultimately projected by the BiOp given fisheries closures in the central and western Aleutians.
- The SSLMC notes that the most current population estimate for the wDPS has climbed to approximately 77,000 animals; 52,000 in the US and 25,000 in Russia. The SSLMC notes that the wDPS continues to increase at an overall rate of approximately 1.5% per year. Accordingly, the SSLMC questions whether this population can legitimately be considered to be in jeopardy of extinction and request that the CIE review that determination.
- The SSLMC notes that the populations of SSLs at the easternmost and westernmost portions of its range (Eastern Aleutians & GOA, Sea of Okhotsk, Kuril Islands) are robust and increasing. The central portion of the wDPS range (central and western Aleutians, Commander Islands) is the area of notable decreases in population. Given the localized area of population decline, it is likely that localized factors (other than chronic nutritional stress) are affecting the population recovery and growth.
- The SSLMC also notes that the Commander Islands and the western and central Aleutians have very similar population declines, despite the creation of “no fishing zones” in the Commander Islands beginning in the late 1950s, although effective management of those zones was not put into place until the 1980s (V. Burkanov, Pers comm. to SSLMC 7.16.2012). Additionally, the SSLMC notes that fishing for walleye pollock in the Aleutian Islands has been closed since 1999. This suggests that other factors, such as exposure to contaminants or disease, may be adversely affecting population recovery and growth. For example, the SSLMC recently received a paper by Castellini et al. (in press) that indicates mercury contamination in pups increases along a gradient from east to west in the Gulf of Alaska and Aleutian Islands.
- The SSLMC notes that the cod harvest rate in the central and western Aleutians was exaggerated because of the use of the survey biomass estimates, rather than the total biomass estimates. As a result, the impacts from the harvest of Pacific cod in the western and central Aleutians were substantially lower than those assumed in the 2010 BiOp.
- The SSLMC received a presentation from Dr. Kerim Aydin (AFSC) that summarized results from multi-species models that indicate that large Pacific cod consume Atka mackerel almost exclusively, in some years accounting for up to 34% of total Atka mackerel mortality. The Committee questions whether restricting Pacific cod fishing in areas 543 and 542 achieves the conservation goals for Steller sea lions.
- The SSLMC is charged with developing alternatives for consideration in the 2012 SSL Mitigation Measures EIS. The Committee notes that alternative metrics to measure the effectiveness of those measures are needed, such as methods to estimate the biomass of SSL prey species that remain after fishing rather than relying solely on fishery removals. The SSLMC requests that the CIE review and recommend other metrics by which mitigation measures may be evaluated.

On behalf of the North Pacific Fishery Management Council, I thank you for participating in this public forum, and ask that you fully consider the comments you have heard today and will hear tomorrow as you develop Chapter 2 of your report. The Council is committed to using the best available scientific information to sustainably manage our nation's most productive fisheries. The Council believes that a good, public, transparent, and responsive process is critically important to help ensure that the best, scientifically-based management decisions are made. The Council commends the National Marine Fisheries Service for hosting this public forum to help ensure that all available data and information are available for this important review of the 2010 Biological Opinion, and the Council looks forward to your report.