

January 18, 2011

Dr. James W. Balsiger
Administrator
Alaska Region, National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Dear Dr. Balsiger:

We commend the National Marine Fisheries Service (NMFS) for its substantial work toward sustainable fisheries in Alaska and for completing the Endangered Species Act (ESA) Section 7 consultation process evaluating the impacts of fisheries on endangered Steller sea lions. Release of the final Biological Opinion (BiOp) and implementation of the needed protections should complete this process that the North Pacific Fishery Management Council (Council) recommended starting almost six years ago. The spatial and temporal closures to Atka mackerel and Pacific cod fisheries in the Aleutian Islands implemented by the interim final rule are clearly necessary to mitigate the substantial declines of Steller sea lions in that area. As explained in our earlier comments and testimony, more must be done to address low natality across the population in order to allow for recovery of the species. At this time, we are hopeful that a process can be established to consider ecosystem needs—including top predators, like Steller sea lions—explicitly in management decisions, such as when setting catch levels and establishing gear allocations. Such a process could involve NMFS, the Council, and other stakeholders so that we—scientists, fishermen, Alaskans, and the broader public—and not the courts, make the first attempt to address this issue.

Oceana works to ensure healthy ocean ecosystems that provide sustainable Alaskan fisheries and support vibrant communities. The decline and continued failure to recover of the western stock of Steller sea lions is telling all of us very clearly that there is still work to do to reach that goal. We can and must find a better way to take fish from the ocean and to consider the needs of marine ecosystem in those decisions. We should take this opportunity to consider the changes needed to build sustainable Alaskan fisheries, potentially those using hook-and-line and other lower-impact gear, rather than seeking to undermine legal and scientific requirements in order to allow a few more years of industrial trawling.

Oceana, together with Ocean Conservancy, Greenpeace USA, and World Wildlife Fund provided substantive comments on the Draft BiOp on September 3, 2010. We incorporate those comments by reference here. Along with additional support for management changes in the western Aleutian Islands, our comments provided substantial information about the manner in which the status of the stock was described, low natality across the population, and the need to take action to allow for recovery in areas outside the western Aleutian Islands. Few of these substantive comments appear to have been addressed in the Final BiOp or interim rule. NMFS has not taken action to mitigate the overall decline in natality; address local declines in some regions; rebuild the historically viable rookeries in the Pribilof Islands; or address the effects of the past reductions of the prey base caused by commercial fisheries, in particular the past

overfishing of Aleutian and Aleutian Basin/Bogoslof pollock stocks and a Gulf of Alaska pollock stock that has failed to rebound significantly since the 1980s. Triage to stem the continuing sea lion declines in the Aleutians is clearly justified, and more basic changes in fisheries management are necessary to address the shortcomings of a maximum yield approach and allow the Steller sea lion Western Distinct Population Segment (DPS) to recover.

Though the management measures implemented in 2001 appear to be having beneficial effects, the Western DPS clearly is not yet out of trouble. Only ten years ago, the population was at its lowest recorded size in history. Since then, there has been a small but not statistically significant increase, with most of the growth occurring in the four-year period immediately following implementation of fishing mitigation measures in critical habitat. The population now may be stable or slightly increasing. Overall, however, the Western DPS is not increasing in a statistically significant manner, and any increases certainly are not approaching the established recovery criterion that the population show a sustained, statistically significant annual growth rate of 3%.¹

One generation of Steller sea lions has grown up during this management regime. A male pup born during the first years of the fishing closures might already be defending breeding territory on a rookery. A female pup born during the same time would be of prime breeding age and should have produced 3 or 4 pups by now. It is likely, however, that she has produced only 2 or fewer pups because female Steller sea lions today do not produce pups at the same rate female sea lions did 30 years ago. This decline in birth rates is a fundamental issue that compromises the recovery of the species, and it does not appear that the current fishing restrictions are adequate to address it. The lower birthrates are seen throughout the Western DPS—not just in the western Aleutian Islands, but the interim rule implemented no changes in management to address the broader problem. Nor does the BiOp explain why additional changes in management are not necessary to address the estimated low birth rates and pup ratios throughout the Western DPS.

Existing mitigation measures have resulted in greatly improved juvenile survival, but the birth rates of adult females have largely been ignored. The Western DPS is aging as higher survival of adults and juveniles outpaces the lower birthrates. A population with this structure is less resilient to perturbations and cannot quickly recover from population fluctuations. The risk of extinction for the Western DPS increases as the population ages and birth rates stay low; there is less growth capacity to recover quickly from low population sizes. Accordingly, low birth rates among Western DPS adult females should be a major focus of recovery efforts and management throughout the range of Western DPS going forward.

A small number of breeding rookeries are largely responsible for most of the pup production of the Western DPS. Today, twelve rookeries produce over 60% of the pups. With such small, discrete sites responsible for most of the production, the population is vulnerable to stochastic events that could suddenly put the population on a declining trajectory. The recent volcanic eruption of the Kasatochi rookery in the central Aleutians was a sobering reminder of this risk.² Several lines of evidence, including branding and radio telemetry research as well as genetics

¹ Recovery Plan for the Steller Sea Lion V-21, *available at* http://www.fakr.noaa.gov/protected_resources/stellers/recovery.htm (hereinafter “Recovery Plan”).

² Fortunately, the Kasatochi eruption occurred after the pupping season, and there were no apparent mortalities.

research, have verified that adult female Steller sea lions show a high degree of fidelity to the rookeries at which they were born.³ Research has confirmed that gene flow between rookeries is low—about 9.5 females per generation disperse to another rookery, usually at rookeries near their birth rookery.⁴ Subsequent genetics studies have confirmed earlier findings.⁵

Gene flow from one rookery population to another appears sufficient to maintain genetic heterozygosity, but limited mixing between and among rookery populations means that recruitment from outside the local or regional breeding population is unlikely to boost declining breeding populations:

*Tagging and branding studies provide further evidence that the breeding behavior of Steller sea lions probably reduces opportunities for genetic mixing among rookeries although Steller sea lions have been documented to travel large distances during the non-breeding season. The majority of females marked as pups, then later resighted as adults, have returned to their rookery of birth to breed (Calkins and Pitcher, 1982; NMFS, 1995). The few resighted females observed breeding at rookeries other than their natal site were all at rookeries near their birth rookery. This apparent natal site fidelity not only reduces genetic mixing among rookeries, but also makes it less likely that declining rookeries will be bolstered by recruitment from other rookeries.*⁶

In its 1995 Status Review of the U.S. Steller Sea Lion Population, NMFS noted that small, isolated breeding populations are highly vulnerable to catastrophic events that a larger population might be expected to withstand:

*Such small populations which have a restricted range, as predicted to occur within 20 years by all four models, are highly vulnerable to rare events which could have catastrophic effects (e.g., an epizootic) and could quickly eradicate the remaining animals in the population.*⁷

The BiOp correctly concludes that triage is needed in the Western and Central Aleutians as retaining breeding populations in those areas and across the range of the Western DPS is crucial to recovery. While the fisheries mitigation measures in the Aleutians should help to recover a part of the breeding population, the BiOp does not explain why additional action was unnecessary in other parts of the range.

Nor does the BiOp explain why steps need not be taken to address the failure of the sea lion population in the central Gulf. Too much fish is being removed from Steller sea lion critical

³ T.R. Loughlin, Using the phylogeographic method to identify Steller sea lion stocks, pp. 159-171, *In*: A. Dizon, S.J. Chivers, and W.F. Perrin (eds.), Molecular Genetics of Marine Mammals, Special Publication #3 of the Society for Marine Mammalogy (1997).

⁴ J.W. Bickham, J.C. Patton, and T.R. Loughlin, High variability for control-region sequences in a marine mammal: Implications for conservation and biogeography of Steller sea lions, *J. Mammal.* 77(1), 1996: 95-108; Anne E. York, Richard L. Merrick, and Thomas R. Loughlin, An Analysis of the Steller Sea Lion Metapopulation in Alaska, pp. 259-292 *In*: Dale R. McCullough (editor), Metapopulations and Wildlife Conservation, Island Press (1996); 62 Fed. Reg. 24349 (May 5, 1997).

⁵ See Recovery Plan at Section IB.

⁶ 62 Fed. Reg. 24349 (May 5, 1997) (emphasis added).

⁷ NMFS Status Review of the U.S. Steller Sea Lion Population (1995) at 24.

habitat around Kodiak. Over 300 vessels fish for Pacific cod and pollock in sea lion critical habitat there, and the proportion of this fish taken in critical habitat remains high. The fleet includes vessels of various sizes that use bottom trawls, midwater trawls, jigs, longline, or pots. In the final BiOp, NMFS made no attempt to refine its “exposure analysis” to show the relative impacts of different gear sectors that target the same fish. As a result, there is a substantial risk that, if required by a court to address this issue, the agency would do so in a manner that disproportionately affects smaller, more sustainable sectors of the fleet. We hope that the issues surrounding fisheries and Steller sea lions can be resolved in a cooperative process involving the agency, industry, communities, and conservation organizations without court action.

Further, factory trawlers overfished the Aleutian pollock stock in the 1990s, and the Aleutian Basin/ Bogslof pollock stocks were collapsed by overfishing in the 1980s and 1990s. The collapse of these stocks ended a substantial portion of the large-scale commercial fishing opportunities in the Aleutian Islands and removed a considerable prey base for Steller sea lions, which now must rely on a less diverse and less abundant prey field. In addition to sea lions, the fish processing plant in Adak, which was built to rely on a congressional allocation of fish from an Aleutian pollock stock that can no longer support sustainable fisheries, is another victim of this unsustainable management. While it may be unfortunate that the remaining large-scale fisheries that target Steller sea lion prey must bear the brunt of recovery efforts, this is not the appropriate process in which to address the Adak processing plant. When operational, that plant processes primarily Pacific cod and does not process any of the Atka mackerel trawled by the Seattle-based head-and-gut fleet. We support efforts to maintain communities like Adak and to provide sustainable Alaskan fisheries. Together, we can find a way to do that without sacrificing our ocean resources.

It has been 20 years since the Western DPS was first listed as threatened under the ESA, 17 years since critical habitat was designated, and now 11 years since management measures to reduce the catches of groundfish prey in Steller sea lions’ critical habitat were first enacted. After a lengthy process, a revised recovery plan for the Western DPS was completed three years ago, and more than \$100 million has been spent on research. The fishery mitigation measures to date have been worthwhile; the Western DPS is stable or increasing for the first time in 40 years. This 2010 BiOp and the interim rule are the latest pieces in the management framework, and they allow for continued fishing opportunities for the groundfish fleet. Under the interim final rule, groundfish quotas change little; the Atka mackerel catch will be reduced by only 23% from 2010 and the Pacific cod quota will not be reduced at all.⁸

The State of Alaska, head-and-gut trawl companies, and freezer longliners have filed broad legal challenges to the implementation of the Reasonable and Prudent Alternative (RPA). These lawsuits appear intended to maximize short-term profits and will only push the problem onto future generations. We believe the current RPA should be implemented, even while we are convinced that more must be done to allow for recovery of the species. In addition to supporting this RPA, we believe it is possible to achieve a durable solution throughout the range—one reached by Alaskans, that furthers sustainable fisheries and supports vibrant communities. Such a solution would provide for fishery quotas with ecosystem set-asides and would recognize the varying impacts of gear types and spatial and temporal components to rates of fishing and biomass removals. The process would involve the North Pacific Fishery Management Council,

⁸ See <http://www.fakr.noaa.gov/npfmc/CouncilSpecs1210.pdf>.

Alaska communities, the Alaska Department of Fish and Game, the Alaska Board of Fish and all stakeholders to ensure the groundfish fisheries move towards sustainable, ecosystem-based accounting. We hope to get there together and without a federal judge forcing us to do so.

We look forward to working with you on this issue.

Sincerely,

A handwritten signature in black ink that reads "Susan J. Murray". The signature is written in a cursive style with a large, sweeping flourish at the end.

Susan Murray

Director, Pacific
Oceana

cc: Eric Olson, Chair, North Pacific Fishery Management Council
The Honorable Sean Parnell
Senator Patty Murray
Senator Maria Cantwell
Senator Lisa Murkowski
Senator Mark Begich