

# 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:

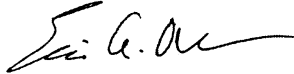
- a) The Council reiterates its request of December 23, 2009 to modify the review schedule to allow the public, SSLMC, SSC, and Council the opportunity to review and comment on the draft BiOp prior to the CIE review. The TOR and SOW should be modified to task the reviewers to consider any such comments 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

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