

Council Motion
June 2013
D-2 Steller Sea Lion Draft EIS

The Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area, consisting of two volumes and over 1,000 pages, was released to the public and the Council on May 10, 2013. At this meeting the Council received presentations from NMFS Alaska Region on the Draft EIS, as well as some preliminary information about the analytical approach that will be used in the future biological opinion on Steller sea lion mitigation measures (See memo DeMaster to Kurland dated May 24, 2013; memo Balsiger to Olson May 28, 2013 and supporting documents). The Council again acknowledges the hard work of NMFS staff in putting together the DEIS as well as the analyses prepared in response to previous comments by the Council. We appreciate that these issues continue to be controversial, and express our appreciation for the professionalism brought to the task.

The Council's preliminary review of the Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area (DEIS) confirms that the Council and the public are still left without the key information needed to make fully informed public comment and a final decision on Steller sea lion mitigation measures. Many of the relevant supporting analyses are incomplete and pending, and there remains continued reliance on draft unpublished studies in critical sections of the document, particularly chapter 5. The Council reiterates its earlier comments about the need to have all of the relevant information and a complete analysis available for review and comment by the public before the Council makes a decision on a preferred alternative. Failure to provide this information jeopardizes the NEPA process in that the Council and the public will not have the necessary information to make informed comments or decisions on a final preferred alternative.

Although improved from the Preliminary Draft EIS presented in April, the DEIS is written with the implicit assumption that the findings of the 2010 Biological Opinion will not change, even though the agency has stated that new information available since the completion of the 2010 Biological Opinion is significant, will be objectively reviewed, and may result different metrics for evaluating fisheries mitigation measures. And, while the DEIS very generally acknowledges the two independent scientific reviews of the 2010 Biological Opinion, and addresses a few aspects of the criticisms of those reviews, it does not present the agency's responses to the heart of those critical reviews: namely, that there is no scientific support for the conclusion of the 2010 Biological Opinion that fisheries jeopardize Steller sea lions through competition for prey, which results in chronic nutritional stress and reduced natality. Whether such a significant negative impact on Steller sea lions from the groundfish fisheries exists is as relevant under NEPA as it is under the ESA. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. NEPA documents must concentrate on the issues that are "truly significant to the action in question, rather than amassing needless detail" 40 CFR § 1500.1(b).

The truly significant issue is the potential for negative interactions between fisheries removals and Steller sea lions. The DEIS assumes that more fishing and more areas open to fishing results in greater negative effects on Steller sea lions, and evaluates the alternatives accordingly, without explaining how or why this assumption is merited in light of the existing criticism of the independent reviewers. NEPA requires that all major points of view on the environmental impacts of the alternatives must be

discussed and disclosed in the draft EIS (40 CFR § 1502.9(a)). The EIS should include an analysis of the potential impacts of fishing on sea lions, their prey, and critical habitat, and incorporate the agency's responses to the findings and recommendations of the independent reviews into this analysis, and then apply it across all alternatives. This information must be included in order for the EIS to meet the requirement to "take a hard look at the environmental effects" of each of the alternatives. Without these analyses, the EIS will not be based on the best scientific information, nor will the resulting decisions that depend on the EIS analysis.

The Council has previously identified this as a critical shortcoming in the overall approach to the EIS, and the way the process is unfolding for public comment and Council participation. This problem was also raised once again by the chairman of the Council's Steller Sea Lion Mitigation Committee, noting that the DEIS remains deficient, and without this analysis the committee cannot provide informed advice to the Council or the agency.

In our April motion, the Council stated that, "At minimum, the DEIS should contain a stand-alone section identifying the findings of the 2010 BiOp, the findings and recommendations of the Independent Reviews, and NMFS' response to each controversial issue identified by the Independent Reviews." We repeat this recommendation here. NEPA requires that the document include all of the analyses and information discussed above in order to be complete.

The Council also requests the agency reconsider its policy choice regarding its treatment of recovery plan criteria in the EIS and as the basis for jeopardy and adverse modification (JAM) determinations in the upcoming BiOp.